DOE O 350.3, Labor Standards Compliance, Contractor Labor Relations, and Contractor Workforce Restructuring Programs, Review and Comment Print This Page

Overall Comments

Click the **Add Comment** button to enter a comment about the document as a whole (e.g., effectiveness, tone, applicability, clarity). Do not use this section to comment on a specific section of the document.

Suggested comment from Cynthia Baebler for Ames Site Office
This package represents the official, consolidated comments of **N/A - Comment package automatically submitted.**
No Comment

Suggested comment from Donna Spencer for Berkeley Site Office
This package represents the official, consolidated comments of **N/A - Comment package automatically submitted.**
No Comment

Suggested comment from Debra Smiley for Bonneville Power Administration
This package represents the official, consolidated comments of **N/A - Comment package automatically submitted.**
No Comment

Response:
Accept

Suggested comment from Helen Todosow for Brookhaven National Laboratory
This Order does not directly impose any requirements upon contractors, therefore it does not apply to BNL.

Suggested comment from Aundrea Clifton for Brookhaven Site Office
This package represents the official, consolidated comments of **N/A - Comment package automatically submitted.**

Included comments:

Helen Todosow for Brookhaven National Laboratory
This Order does not directly impose any requirements upon contractors, therefore it does not apply to BNL.

Suggested comment from Andrea Cooper for Carlsbad Field Office
No Comment

Suggested comment from Lynette Kane for Chicago Office
This package represents the official, consolidated comments of **N/A - Comment package automatically submitted.**
No Comment

Suggested comment from Dan Sansotta for East Tennessee Technology Park - UCOR (URS | CH2M)
This package represents the official, consolidated comments of **N/A - Comment package automatically submitted.**
No Comment

Suggested comment from David Baird for Fermi National Accelerator Laboratory
This package represents the official, consolidated comments of **David Baird - Fermilab, DPC**
No Comment

Suggested comment from Ronald Cavalier for Hanford - Mission Support Alliance (MSA)
This package represents the official, consolidated comments of **RJ Cavalier**
No Comment

Suggested comment from Sharon Edge-Harley for Headquarters AU (formerly HS)
This package represents the official, consolidated comments of **William A. Eckroade, Principal Deputy Chief for Operations and Lesley A. Gasperow, Principal Deputy Chief for Corporate Functions**
No Comment

Response:

Accept

Suggested comment from John Wall for Headquarters CF
This package represents the official, consolidated comments of **N/A - Comment package automatically submitted.**
No Comment

Response:
Accept

Suggested comment from Daniel Woomer for Headquarters CI
This package represents the official, consolidated comments of **N/A - Comment package automatically submitted.**
No Comment

Response:
Accept

Suggested comment from Marilyn Jacobs for Headquarters EM

Included comments:

Bobby Williams for Office of River Protection
No Comment

Response:
Accept

Andrea Cooper for Carlsbad Field Office
No Comment
Tracy Williamson for Savannah River Operations Office (EM)
No Comment

Response:
Accept

Suggested comment from Steve Duarte for Headquarters GC

Included comments:

SME Stephen.Smith@hq.doe.gov
No Comment

Response:
Accept

SME reesha.trznadel@hq.doe.gov
No Comment

Response:
Accept

Suggested comment from Rauland Sharp for Headquarters HC
This package represents the official, consolidated comments of **N/A - Comment package automatically submitted.**

No Comment

Response:
Accept

Suggested comment from Bill Schwartz for Headquarters HG
This package represents the official, consolidated comments of **Poli A. Marmolejos, Director**
No Comment

Response:
Accept

Suggested comment from Emily Jackson for Headquarters LM
No Comment

Response:
Accept

Major comment from Cathy Tullis for Headquarters NA
This package represents the official, consolidated comments of **Cathy Tullis**

Included comments:

SME lloyd.deserisy@nnsa.doe.gov
The order appears to be missing a Contractor Requirements document for any or all chapters. The previous order had a CRD for each chapter.

Response:
Reject There has been a Departmental policy change in this regard. As Orders are revised, CRD's are removed and the requirements from the CRD's are addressed in contract H clauses. The proposal to remove CRD's from this Order was submitted and approved by the DRB on 2/5/14.

Suggested comment from Jennifer Kelley for Headquarters SC
This package represents the official, consolidated comments of **Stephanie Short, Associate Deputy Director for Field Operations**
Regarding DOE review of Contractor Adverse Impact Analyses, given recent Tecom guidance, and requirement for DOE Contracting Officer to make allowable cost determinations in contractor Tecom/Discrimination cases, it is important that current DOE Workforce Restructuring Policies be revised to include/involve CO's and Site Offices in the upfront review/approval process of Contractor Adverse Impact Analyses.

Response:
Reject The Chu guidance requires submission of the Adverse Impact Analysis (AIA) to the Chief Counsel. If the contractor requests DOE/NNSA approval, the AIA must be submitted to the OGC or NNSA-GC, as applicable. In order to preserve Attorney Client Privilege the documents must be handled through counsel. The Chief Counsel should advise the CO of OGC/NNSA-GC approval/disapprove and assist the CO in determining whether the costs are unallowable under *Tecom.*

Suggested comment from Christie Melbihess for Idaho National Laboratory - NE

Included comments:

SME Toni.Vandel@inl.gov
No Comment

SME Mark.Wangler@inl.gov
No Comment

Suggested comment from Carla Campbell for Idaho National Laboratory - ICP-EM
No Comment

Major comment from Yvonne Salaz for Los Alamos National Laboratory
This package represents the official, consolidated comments of **Y. Salaz, LANL DPC**

This Order does not contain a CRD and is not applicable to Site Contractors. As such, the Los Alamos National Laboratory will have no comment.

Suggested comment from Bo Kim for NA-00
This package represents the official, consolidated comments of **N/A - Comment package automatically submitted.**
No Comment

Suggested comment from Jeanne Hill for NA-10 Defense Programs
This package represents the official, consolidated comments of **Jeanne Hill, NA-10 DPC**
No Comment

Suggested comment from Ann Madison for NA-20 Defense Nuclear Nonproliferation
This package represents the official, consolidated comments of **Jacquelin McKisson, NA-20 Management Analyst**
No Comment

Suggested comment from Donna Barnette for NA-30 Naval Reactors
This package represents the official, consolidated comments of **N/A - Comment package automatically submitted.**
No Comment

Suggested comment from Diana Tamayo for NA-80 Counterterrorism and Counterproliferation
No Comment

Suggested comment from Derek LaHouse for NA-Management and Budget
This package represents the official, consolidated comments of **Derek LaHouse**
No Comment

Suggested comment from Jeannie Berens for National Renewable Energy Laboratory
No Comment

Suggested comment from Patricia Hartig for Nevada National Security Site - Wackenhut Services Inc.
No Comment

Suggested comment from Sharon O'Bryant for NNSA Production Office

Included comments:

SME Jill.Albaugh@npo.doe.gov
No Comment
SME larry.warner@npo.doe.gov
No Comment
SME Frank.Cruz@npo.doe.gov
No comments
SME Terri.Slack@npo.doe.gov
Since DOE/NNSA has expectations that contractors follow the May 2011 Secretary Chu guidance, quere whether a CRD should be included.
Linell Carter for Pantex - BWXT Pantex, LLC
No Comment
SME williamsonpl@y12.doe.gov

No Comment
SME thuecksll@y12.doe.gov
No Comment

Suggested comment from Kathy Myers for Oak Ridge Institute for Science and Education

Included comments:

SME Dan.Standley@orau.org
No Comment

Suggested comment from Regina Loy for Oak Ridge National Laboratory
Does not apply as this Order does not directly impose any requirements upon contractors.

Suggested comment from Gary Richards for Oak Ridge National Laboratory - Isotek Systems, LLC
This package represents the official, consolidated comments of **N/A - Comment package automatically submitted.**
No Comment

Suggested comment from Bobby Williams for Office of River Protection
No Comment

Response:
Accept

Suggested comment from Madelyn Wilson for Office of Scientific and Technical Information
No Comment

Suggested comment from Regina Zehm for Pacific Northwest Site Office
This package represents the official, consolidated comments of **N/A - Comment package automatically submitted.**
No Comment

Suggested comment from Linell Carter for Pantex - BWXT Pantex, LLC
No Comment

Suggested comment from Joshua Hammill for Princeton Site Office
This package represents the official, consolidated comments of **N/A - Comment package automatically submitted.**
No Comment

Major comment from Jennifer Bitsie for Sandia Field Office

Included comments:

SME Lindsey.vanness@nnsa.doe.gov
If the Contractor Requirement Document is not affected by these changes, it should be clear that the CRD of the chapter being replaced is not being canceled.
SME lloyd.deserisy@nnsa.doe.gov
The order appears to be missing a Contractor Requirements document for any or all chapters. The previous order had a CRD for each chapter.

Response:
Reject There has been a Departmental policy change in this regard. As Orders are revised, CRD's are removed and the requirements from the CRD's are addressed in contract H clauses. The proposal to remove CRD's from this Order was submitted and approved by the DRB on 2/5/14.

Suggested comment from Sandee Greene for Savannah River Field Office
No Comment

Suggested comment from Tracy Williamson for Savannah River Operations Office (EM)
This package represents the official, consolidated comments of **N/A - Comment package automatically submitted.**
No Comment

Response:
Accept

Suggested comment from Bruce Way for Savannah River Site - Savannah River Nuclear Solutions (SRNS) EM
No Comment

Suggested comment from Kyong Watson for SLAC National Accelerator Laboratory Site Office
This package represents the official, consolidated comments of **N/A - Comment package automatically submitted.**
No Comment

Suggested comment from Joe Scarcello for Thomas Jefferson National Accelerator Facility

Included comments:

SME rbarbosa@me.com
No Comment

Suggested comment from Scott Mallette for Thomas Jefferson Site Office
This package represents the official, consolidated comments of **N/A - Comment package automatically submitted.**

Included comments:

SME rbarbosa@me.com
No Comment

Suggested comment from Clarence Hinton for Y-12 National Security Complex - BWXT
This package represents the official, consolidated comments of **Clarence C. Hinton**

Included comments:

SME williamsonpl@y12.doe.gov
No Comment
SME thuecksll@y12.doe.gov
No Comment

1-3. PURPOSE; CANCELLATION; APPLICABILITY

1. PURPOSE.

a. To ensure that Department of Energy (DOE) and National Nuclear Security Administration (NNSA) management and operating and other facility management contractors pursue collective bargaining practices that promote efficiency and economy in contract operations, judicious expenditure of public funds, equitable resolution of disputes, and effective collective bargaining relationships.

Suggested comment from Marilyn Jacobs for Headquarters EM

Included comments:

SME Cindy.Oliver@rl.doe.gov

Reword to be consistent with b. below: To ensure that Department of Energy (DOE) and National Nuclear Security Administration (NNSA) management and operating **contractors,** ~~and~~ other facility management contractors**,** and security contractors, pursue collective bargaining practices that promote efficiency and economy in contract operations, judicious expenditure of public funds, equitable resolution of disputes, and effective collective bargaining relationships.

Response:
Accept

Major comment from Cathy Tullis for Headquarters NA

Included comments:

Delegate Emily Mishoe for Headquarters NA
Create a separate CRD because there are requirements in the document that apply to contractors. Has to be sent out for comment prior to publcation.

Response:
Reject There has been a Departmental policy change in this regard. As Orders are revised, CRD's are removed and the requirements from the CRD's are addressed in contract H clauses. The proposal to remove CRD's from this Order was submitted and approved by the DRB on 2/5/14.

Suggested comment from Cathy Tullis for Headquarters NA

Included comments:

Ken West for NA-Acquisition and Project Management
Originally there were 2 a's. The list should be a-e. (this appears to have been corrected.)

Response:
Accept

Suggested comment from Ken West for NA-Acquisition and Project Management
Originally there were 2 a's. The list should be a-e. (this appears to have been corrected.)

Response:
Accept

Suggested comment from Jodi Dawson for Richland Operations Office

Included comments:

SME Cindy.Oliver@rl.doe.gov

Reword to be consistent with b. below: To ensure that Department of Energy (DOE) and National Nuclear Security Administration (NNSA) management and operating **contractors,** ~~and~~ other facility management

contractors, and security contractors, pursue collective bargaining practices that promote efficiency and economy in contract operations, judicious expenditure of public funds, equitable resolution of disputes, and effective collective bargaining relationships.

Response:
Accept

Suggested comment from Scott Mallette for Thomas Jefferson Site Office

Included comments:

SME dbrittin@jlab.org

The whole purpose section appears disjointed. A concise purpose statement that ties these three elements together would be helpful in understanding the need for the Order. There are two subparagraph a's used.

It would make sense to keep this part of the original 350.1 Order; especially since the latest version in RevCon deletes the CRD in Chapter VII.

b. To ensure DOE/NNSA Contracting Officers (COs) and contractor industrial relations/human resources specialists achieve full consultation with management and operating contractors, facility management contractors, and security contractors, prior to contractors' negotiation of collective bargaining agreements (CBA) and during the term of a CBA on matters that may have an impact on costs under DOE/NNSA contracts, work rules that impact mission performance, or exceptions to DOE/NNSA policy and past customs/practices.

c. To ensure that applicable labor standards are included in all DOE/NNSA contracts and subcontracts.

Suggested comment from Cathy Tullis for Headquarters NA

Included comments:

Ken West for NA-Acquisition and Project Management
The FAR and DEAR already require that labor standards clauses are included in all DOE/NNSA contracts and subcontracts to the extent applicable. Suggest deleting.

Response:
Reject This Order provides additional direction to DOE/NNSA Elements to ensure compliance with the requirements of the DEAR and FAR.

Suggested comment from Ken West for NA-Acquisition and Project Management
The FAR and DEAR already require that labor standards clauses are included in all DOE/NNSA contracts and subcontracts to the extent applicable. Suggest deleting.

Response:
Reject This Order provides additional direction to DOE/NNSA Elements to ensure compliance with the requirements of the DEAR and FAR.

d. To ensure DOE/NNSA cooperation with the Department of Labor (DOL), as appropriate, to:

(1) obtain information,

(2) provide complete and timely reports, and

(3) exercise oversight enforcement responsibility to ensure contractor compliance with applicable laws.

e. To ensure DOE/NNSA COs and contractor industrial relations/human resources specialists consult with management and operating contractors, facility management contractors, and security contractors, prior to the contractor performing workforce restructuring to ensure such activities are undertaken in compliance with DOE policy and practice and performed in a manner that minimizes involuntary separations, retains critical skills, and minimizes the impact on programmatic activities.

Suggested comment from Cathy Tullis for Headquarters NA

Included comments:

SME ron.mendoza@npo.doe.gov

To ensure DOE/NNSA COs and contractor industrial relations/human resources specialists consult with management and operating contractors, facility management contractors, and security contractors, prior to the contractor performing workforce restructuring to ensure such activities are undertaken in compliance with DOE policy and practice and performed in a manner that minimizes workforce restructuring, retains critical skills, and minimizes the impact on programmatic activities.

Replace involuntary separations with workforce restructuring.

Response:
Reject By Statute, Section 3161 requires DOE to plan for contractor workforce restructuring to minimize the use of involuntary separations.

Suggested comment from Jennifer Kelley for Headquarters SC

The whole purpose section appears disjointed. A concise purpose statement that ties these three elements together would be helpful in understanding the need for the Order. There are two subparagraph a's used (in the actual draft version).

It would make sense to keep this part of the original 350.1 Order; especially since the latest version in RevCom deletes the CRD in Chapter VII.

Response:
Reject

Creating a new 350.3 will provide clarity. Responsibility for what were Chapters of 350.1 has been transferred by Secretarial decision to separate organizations. OGC has the responsibility for Chapters I, II, and III of 350.1 and MA/HSS have the responsibility for the remaining chapters in 350.1.

The two (a) paragraphs have been corrected in the final to reflect paragraphs (a) and (b).

Suggested comment from Sharon O'Bryant for NNSA Production Office

Included comments:

SME ron.mendoza@npo.doe.gov

To ensure DOE/NNSA COs and contractor industrial relations/human resources specialists consult with management and operating contractors, facility management contractors, and security contractors, prior to the contractor performing workforce restructuring to ensure such activities are undertaken in compliance with DOE policy and practice and performed in a manner that minimizes workforce restructuring, retains critical skills, and minimizes the impact on programmatic activities.

Replace involuntary separations with workforce restructuring.

Response:
Reject By Statute, Section 3161 requires DOE to plan for contractor workforce restructuring to minimize the use of involuntary separations.

SME Terri.Slack@npo.doe.gov

I agree with Ron's comment - good catch.

2. <u>CANCELLATION</u>. Chapter I *Labor Relations*, Chapter 2 *Labor Standards*, and Chapter III *Reductions in Contractor Employment*, of DOE O 350.1 Chg 4, *Contractor Human Resource Management Programs*, dated 9-30-1996. Cancellation of a directive does not, by itself, modify or otherwise affect any contractual or regulatory obligation to comply with the directive. Contractor Requirements Documents (CRDs) that have been incorporated into a contract remain in effect throughout the term of the contract unless and until the contract or regulatory commitment is modified to either eliminate requirements that are no longer applicable or substitute a new set of requirements.

Suggested comment from Jennifer Bitsie for Sandia Field Office

Included comments:

SME Lindsey.vanness@nnsa.doe.gov
Why can't these chapters be revised in DOE O 350.1 instead of developing an entirely new order? It would be more efficient if these changes were made in DOE 350.1

3. APPLICABILITY.

a. <u>Departmental Applicability</u>. This Order applies to all Departmental elements as set forth in Chapters I through III of this Order.

The Administrator of the National Nuclear Security Administration (NNSA) will assure that NNSA employees comply with their respective responsibilities under this directive. Nothing in this Order will be construed to interfere with the NNSA Administrator's authority under section 3212(d) of Public Law (P.L.) 106-65 to establish Administration-specific policies, unless disapproved by the Secretary.

In accordance with the responsibilities and authorities assigned by Executive Order 12344, codified at 50 U.S.C. sections 2406 and 2511 and to ensure consistency through the joint Navy/DOE Naval Nuclear Propulsion Program, the Deputy Administrator for Naval Reactors (Director) will implement and oversee requirements and practices pertaining to this directive for activities under the Director's cognizance, as deemed appropriate.

Major comment from Cathy Tullis for Headquarters NA

Included comments:

Delegate Emily Mishoe for Headquarters NA
Naval Reactors applicability statement should be included in paragraph 3.c.

Response:
Accept

b. <u>Contractor</u>. This Order does not directly impose any requirements upon contractors.

Major comment from Cathy Tullis for Headquarters NA

Included comments:

SME JoAnn.Wright@nnsa.doe.gov
Some of these requirements cannot be fulfilled by the federal staff without imposing requirements on the M&Os. Each section needs to be analyzed to determine the need and content for a Contractor Requirments Document.

Response:
Reject There has been a Departmental policy change in this regard. As Orders are revised, CRD's are removed and the requirements from the CRD's are addressed in contract H clauses. The proposal to remove CRD's from this Order was submitted and approved by the DRB on 2/5/14.

Suggested comment from Jennifer Kelley for Headquarters SC

If the Order does not directly impose any requirements upon contractors then requirements listed in this Order may be contractually unenforceable. If it indirectly imposes requirements upon contractors then those requirements should be listed in the Order through a Contractor Requirements Document (CRD). It appears that the Order does impose requirements. For example, Chapter I, paragraph 4 c (1) talks about Heads of Contracting Activities reviewing and

approving the contractor's proposed economic bargaining parameters (this entails that the contractor was required to submit the parameters). Another example is in Chapter III; paragraph 5 b states each contractor is obligated by DOE contractor workforce restructuring policy to prepare a specific workforce restructuring plan (this suggests that a plan is required to be submitted).

The Department needs to incorporate the requirements of The Secretary's May 5, 2011 memo into a CRD in Chapter III. This would help achieve one of the goals of the department-wide review of past Secretarial memos that was done in July 2013 which stated the Secretary's May 5, 2011 memo was to be incorporated into DOE O 350.1.

Response:
Reject

There has been a Departmental policy change in this regard. As Orders are revised, CRD's are removed and the requirements from the CRD's are addressed in contract H clauses. The proposal to remove CRD's from this Order was submitted and approved by the DRB on 2/5/14.

The requirements imposed on contractors from the Secretary's May 5, 2011 memo will be incorporated into appropriate H clauses or other contract language.

Major comment from Jennifer Bitsie for Sandia Field Office

Included comments:

SME JoAnn.Wright@nnsa.doe.gov
Some of these requirements cannot be fulfilled by the federal staff without imposing requirements on the M&Os. Each section needs to be analyzed to determine the need and content for a Contractor Requirments Document.

Response:
Reject There has been a Departmental policy change in this regard. As Orders are revised, CRD's are removed and the requirements from the CRD's are addressed in contract H clauses. The proposal to remove CRD's from this Order was submitted and approved by the DRB on 2/5/14.

Major comment from Scott Mallette for Thomas Jefferson Site Office

Included comments:

SME dbrittin@jlab.org

If the Order does not directly impose any requirements upon contractors then requirements listed in this Order may be contractually unenforceable. If it indirectly imposes requirements upon contractors then those requirements should be listed in the Order through a Contractor Requirements Document (CRD). It appears that the Order does impose requirements. For example, Chapter I, paragraph 4 c (1) talks about Heads of Contracting Activities reviewing and approving the contractor's proposed economic bargaining parameters (this entails that the contractor was required to submit the parameters). Another example is in Chapter III; paragraph 5 b states each contractor is obligated by DOE contractor workforce restructuring policy to prepare a specific workforce restructuring plan (this suggests that a plan is required to be submitted).

The Department needs to incorporate the requirements of The Secretary's May 5, 2011 memo into a CRD in Chapter III. This would help achieve one of the goals of the department-wide review of past Secretarial memos that was done in July 2013 which stated the Secretary's May 5, 2011 memo was to be incorporated into DOE O

350.1.

c. Equivalencies/Exemptions for DOE O 350.3. Seeking equivalencies and exemptions to this Order must be processed in accordance with DOE O 251.1C, *Departmental Directives Program*.

Major comment from Cathy Tullis for Headquarters NA

Included comments:

Delegate Emily Mishoe for Headquarters NA
Insert the NR applicability statement as an equivalency in 3.c, and remove from 3a.

Response:
Accept

4-6. REQUIREMENTS; RESPONSIBILITIES; REFERENCES

4. REQUIREMENTS. Requirements are set forth in Chapters I through III of this Order.

5. RESPONSIBILITIES. Assignments of Responsibilities are set forth in Chapters I through III of this Order.

6. REFERENCES. Applicable References are listed in Chapters I through III of this Order.

CHAPTER I. CONTRACTOR LABOR RELATIONS and 1-2. PURPOSE; APPLICABILITY

CHAPTER I.
CONTRACTOR LABOR RELATIONS

1. PURPOSE.

a. To ensure that Department of Energy (DOE) and National Nuclear Security Administration (NNSA) management and operating and other facility management contractors pursue collective bargaining practices that promote efficiency and economy in contract operations, judicious expenditure of public funds, equitable resolution of disputes, and effective collective bargaining relationships.

Suggested comment from Marilyn Jacobs for Headquarters EM

Included comments:

SME Cindy.Oliver@rl.doe.gov
To be consistent with b. change to read as follows: To ensure that Department of Energy (DOE) and National Nuclear Security Administration (NNSA) management and operating **contractors, ~~and~~** other facility management contractors**, and security contractors** pursue collective bargaining practices that promote efficiency and economy in contract operations, judicious expenditure of public funds, equitable resolution of disputes, and effective collective bargaining relationships.

Response:
Accept

Suggested comment from Jodi Dawson for Richland Operations Office

Included comments:

SME Cindy.Oliver@rl.doe.gov
To be consistent with b. change to read as follows: To ensure that Department of Energy (DOE) and National Nuclear Security Administration (NNSA) management and operating **contractors, ~~and~~** other facility management contractors**, and security contractors** pursue collective bargaining practices that promote efficiency and economy in contract operations, judicious expenditure of public funds, equitable resolution of disputes, and effective collective bargaining relationships.

Response:
Accept

b. To ensure DOE/NNSA Contracting Officers (COs) and contractor industrial relations/human resources specialists achieve full consultation with management and operating contractors, facility management contractors, and security contractors, prior to contractors' negotiation of collective bargaining agreements (CBA) and during the term of a CBA on matters that may have an impact on costs under DOE/NNSA contracts, work rules that impact mission performance, or exceptions to DOE/NNSA policy and past customs/practices.

2. APPLICABILITY.

This chapter is applicable to all Departmental elements responsible for the management of cost reimbursable contracts that include provisions for DOE reimbursement of contractor human resources costs.

Major comment from Cathy Tullis for Headquarters NA

Included comments:

SME melanie.castle@navy.mil

Because each chapter has individual applicability paragraphs in addition to the overall applicabilities in paragraph 3, in order to prevent confusion, the overall applicability paragraph should be cross referenced in each chapter or restated verbatim.

Response:
Accept Will add "Pursuant to the Applicability provisions set forth at the beginning of this Order,…"

3. REQUIREMENTS.

a. DOE/NNSA shall ensure contractor economic bargaining parameters are reasonable, allowable, and consistent with applicable DOE policies and labor laws.

b. DOE/NNSA retains absolute authority on all questions of security, security rules, and their administration. However, to the fullest extent feasible, DOE shall consult with labor representatives and contractor management in formulating security rules and regulations that affect the collective bargaining process.

c. DOE/NNSA shall not take a public position concerning the merits of a labor dispute between a contractor and its employees or organizations representing those employees.

Major comment from Cathy Tullis for Headquarters NA

Included comments:

Ken West for NA-Acquisition and Project Management

Section 3, Requirements: Add (d): For NNSA, approval of contractor collective bargaining parameters will be conducted in accordance with Business Operating Procedure, BOP-003.0601R1, Contractor Human Resources (CHR) Policy and Approval of Actions Process, Attachment 1, the Approval of Contractor Resources Action Table, Chapter 1 or any revisions thereto. For the purposes of this Chapter, Responsibilities applicable to NNSA personnel in addition to BOP procedures are set forth in the responsibilities section. For the purpose of this Chapter, responsibilities applicable to NNSA personnel in addition to BOP procedures are specifically identified in the "Responsibilities" section.

The labor standards and WFR chapters do not contain any provisions that are inconsistent with the BOP. The chapters merely provide requirements that supplement the BOP approval processes.

The labor relations chapter of 353.1 contains approval paths for the collective bargaining parameters that are inconsistent with the NNSA BOP. Therefore, the language "For NNSA, the requirements of this Chapter shall apply to the extent the requirements are consistent with NNSA Business Operating Procedure, BOP-003.0601R1" is not sufficient and some other changes need to be made to the chapter to bring the BOP and the Chapter into alignment (e.g., changes such as indicating that most of the HCA requirements in section 3 and the CO requirements in section 4 are for DOE only).

Response:
Accept with Modifications

added d.

"For NNSA, approval of contractor collective bargaining parameters will be conducted in accordance with Business Operating Procedure, BOP-003.0601R1, Contractor Human Resources (CHR) Policy and Approval of Actions Process, Attachment 1, the Approval of Contractor Resources Action Table, Chapter 1 or any revisions thereto. For the purpose of this Chapter, responsibilities applicable to NNSA personnel in addition to BOP procedures are specifically identified in the "Responsibilities" section."

Henry Van Dyke for NA-General Counsel

Add (d): For NNSA, the requirements of this Chapter shall apply to the extent the requirements are consistent with NNSA Business Operating Procedure, BOP-003.0601R1, Contractor Human Resources (CHR) Policy and Approval of Actions Process, Attachment 1, the Approval of Contractor Resources Action Table, Labor Relations Section. For the purposes of this Chapter, responsibilities applicable to NNSA personnel in addition to BOP procedures are specifically identified in the "Responsibilities" section.

NOTE: The Labor Standards and Reduction in Contractor Employment chapters do not contain any provisions that are inconsistent with the BOP. Those chapters merely provide requirements that supplement the BOP approval processes. However, in contrast, the Labor Relations chapter of 350.3 contains approval paths for the collective bargaining parameters that are inconsistent with the NNSA BOP. Therefore, the language "For NNSA, the requirements of this Chapter shall apply to the extent the requirements are consistent with NNSA Business Operating Procedure, BOP-003.0601R1" is not sufficient and some other changes need to be made to the chapter to bring the BOP and the Chapter into alignment (e.g., changes such as indicating that most of the HCA requirements in section 3 and the CO requirements in section 4 are for DOE only).

Response:
Accept with Modifications

added d.

"For NNSA, approval of contractor collective bargaining parameters will be conducted in accordance with Business Operating Procedure, BOP-003.0601R1, Contractor Human Resources (CHR) Policy and Approval of Actions Process, Attachment 1, the Approval of Contractor Resources Action Table, Chapter 1 or any revisions thereto. For the purpose of this Chapter, responsibilities applicable to NNSA personnel in addition to BOP procedures are specifically identified in the "Responsibilities" section."

SME JoAnn.Wright@nnsa.doe.gov
The M&Os play a key role in developing negoitation parameters and the Department's expectations in terms of what the government expects in those packages (e.g., business cases to assess reasonableness) and timeliness of submittal of packages need to be levied on the M&Os as requirements.

Response:
Reject Requirements for contractors will be addressed through H clauses to be incorporated into M&O and other cost reimbursement contracts.

Suggested comment from Cathy Tullis for Headquarters NA

Included comments:

SME JoAnn.Wright@nnsa.doe.gov
Identify who in DOE/NNSA is responsible for ensuring the economic paramaters are reasonable (e.g., CO, HCA).

Response:
Reject This comment is addressed in the "Responsibilities" section of this Chapter.

Delegate Emily Mishoe for Headquarters NA

It is unclear what the phrase "to the fullest extent feasible" means?

Response:
Reject "To the fullest extent feasible" operates to limit the phrase "shall consult." At times it may not be possible for much consultation with labor unions or contractors and there is a need to limit the words "shall consult."

SME burke27@llnl.gov

3.b.: This paragraph is unclear as to the definition of "questions of security, security rules, and their administration." As drafted, this would appear to include everything from workplace safety rules to clearance requirements.

Request clarification of what this includes, so that contractor can comply with intent.

Response:
Reject The language in the contract document will be clear as to this issue.

Suggested comment from Jennifer Kelley for Headquarters SC
Paragraph 3a. Other than the example provided, we are unsure what is meant by "economic bargaining parameters which are an exception to DOE policy". It would be helpful to have some additional guidance as to what is meant by this term.

Response:
Accept with Modifications The language has been changed for clarity and to incorporate suggestions from other commenters regarding this paragraph.

Suggested comment from Robert Park for Lawrence Livermore National Laboratory

Included comments:

SME burke27@llnl.gov

3.b.: This paragraph is unclear as to the definition of "questions of security, security rules, and their administration." As drafted, this would appear to include everything from workplace safety rules to clearance requirements.

Request clarification of what this includes, so that contractor can comply with intent.

Response:
Reject The language in the contract document will be clear as to this issue.

Suggested comment from Walter Cyganowski for Livermore Field Office

Included comments:

SME burke27@llnl.gov

3.b.: This paragraph is unclear as to the definition of "questions of security, security rules, and their administration." As drafted, this would appear to include everything from workplace safety rules to clearance requirements.

Request clarification of what this includes, so that contractor can comply with intent.

Response:
Reject The language in the contract document will be clear as to this issue.

Major comment from Ken West for NA-Acquisition and Project Management

Section 3, Requirements: Add (d): For NNSA, approval of contractor collective bargaining parameters will be conducted in accordance with Business Operating Procedure, BOP-003.0601R1, Contractor Human Resources (CHR) Policy and Approval of Actions Process, Attachment 1, the Approval of Contractor Resources Action Table, Chapter 1 or any revisions thereto. For the purposes of this Chapter, Responsibilities applicable to NNSA personnel in addition to BOP procedures are set forth in the responsibilities section. For the purpose of this Chapter, responsibilities applicable to NNSA personnel in addition to BOP procedures are specifically identified in the "Responsibilities" section.

The labor standards and WFR chapters do not contain any provisions that are inconsistent with the BOP. The chapters merely provide requirements that supplement the BOP approval processes.

The labor relations chapter of 353.1 contains approval paths for the collective bargaining parameters that are inconsistent with the NNSA BOP. Therefore, the language "For NNSA, the requirements of this Chapter shall apply to the extent the requirements are consistent with NNSA Business Operating Procedure, BOP-003.0601R1" is not sufficient and some other changes need to be made to the chapter to bring the BOP and the Chapter into alignment (e.g., changes such as indicating that most of the HCA requirements in section 3 and the CO requirements in section 4 are for DOE only).

Response:
Accept with Modifications

added d.

"For NNSA, approval of contractor collective bargaining parameters will be conducted in accordance with Business Operating Procedure, BOP-003.0601R1, Contractor Human Resources (CHR) Policy and Approval of Actions Process, Attachment 1, the Approval of Contractor Resources Action Table, Chapter 1 or any revisions thereto. For the purpose of this Chapter, responsibilities applicable to NNSA personnel in addition to BOP procedures are specifically identified in the "Responsibilities" section."

Major comment from Henry Van Dyke for NA-General Counsel

Add (d): For NNSA, the requirements of this Chapter shall apply to the extent the requirements are consistent with NNSA Business Operating Procedure, BOP-003.0601R1, Contractor Human Resources (CHR) Policy and Approval of Actions Process, Attachment 1, the Approval of Contractor Resources Action Table, Labor Relations Section. For the purposes of this Chapter, responsibilities applicable to NNSA personnel in addition to BOP procedures are specifically identified in the "Responsibilities" section.

NOTE: The Labor Standards and Reduction in Contractor Employment chapters do not contain any provisions that are inconsistent with the BOP. Those chapters merely provide requirements that supplement the BOP approval processes. However, in contrast, the Labor Relations chapter of 350.3 contains approval paths for the collective bargaining parameters that are inconsistent with the NNSA BOP. Therefore, the language "For NNSA, the requirements of this Chapter shall apply to the extent the requirements are consistent with NNSA Business Operating Procedure, BOP-003.0601R1" is not sufficient and some other changes need to be made to the chapter to bring the BOP and the Chapter into alignment (e.g., changes such as indicating that most of the HCA requirements in section 3 and the CO requirements in section 4 are for DOE only).

Response:
Accept with Modifications

added d.

"For NNSA, approval of contractor collective bargaining parameters will be conducted in accordance with Business Operating Procedure, BOP-003.0601R1, Contractor Human Resources (CHR) Policy and Approval of Actions Process, Attachment 1, the Approval of Contractor Resources Action Table, Chapter 1 or any revisions thereto. For the purpose of this Chapter, responsibilities applicable to NNSA personnel in addition to BOP procedures are specifically identified in the "Responsibilities" section."

Major comment from Jennifer Bitsie for Sandia Field Office

Included comments:

SME JoAnn.Wright@nnsa.doe.gov
The M&Os play a key role in developing negoitation parameters and the Department's expectations in terms of what the government expects in those packages (e.g., business cases to assess reasonableness) and timeliness of submittal of packages need to be levied on the M&Os as requirements.

Response:
Reject Requirements for contractors will be addressed through H clauses to be incorporated into M&O and other cost reimbursement contracts.

Suggested comment from Jennifer Bitsie for Sandia Field Office

Included comments:

SME JoAnn.Wright@nnsa.doe.gov
Identify who in DOE/NNSA is responsible for ensuring the economic paramaters are reasonable (e.g., CO, HCA).

Response:
Reject This comment is addressed in the "Responsibilities" section of this Chapter.

4. RESPONSIBILITIES.

4. RESPONSIBILITIES.

a. Office of the Assistant General Counsel for Labor and Pension Law for DOE and the NNSA Office of the General Counsel for NNSA (NNSA-GC).

(1) Establishes and oversees the implementation of labor relations policy in consultation with the Director of the Contractor Human Resources Policy Division for DOE and the Manager, NNSA Contractor Human Resources Division (NNSA-CHRD) for NNSA. Oversight shall also be conducted in consultation with the appropriate Heads of Departmental elements at Headquarters (HQ) and in the Field. This includes:

(a) representing HQ on all matters involving contractor labor relations issues,

(b) informing senior management of significant labor relations developments,

(c) acting as a liaison to other government agencies and to international unions and their representatives,

(d) serving as a clearing-house for labor relations information,

(e) attending meetings and conferences initiated by Departmental elements where union representation will be present,

(f) during the procurement process, analyzing and commenting on proposed contract clauses and provisions related to DOE/NNSA reimbursement of contractor human resource costs,

(g) approving all policy affecting contractor labor relations, and

(h) providing guidance as to the implementation and conformance with applicable Executive Orders, such as those related to Project Labor Agreements.

Suggested comment from Jennifer Kelley for Headquarters SC

Paragraph 4(a)(1) (e) - Is it expected that GC-63 will be present at all contractor labor relations meetings that involve labor issues between the Contractor and its union? It is not feasible nor should it be expected that GC-63 would have a presence at these meetings or conference calls unless it impacts allowability of reimbursable costs to the government or precedent in meetings involving labor issues of the contractor. This item needs to be clarified in regard to what is meant by "initiated by Departmental elements."

Response:
Reject The language anticipates GC attendance will be coordinated in consultation with Departmental Elements.

(2) Works with Departmental elements that originate or change qualification standards, testing requirements, or any other protocol that may affect conditions of employment for contractor employees to ensure they are developed and implemented consistent with DOE/NNSA policies and labor law.

(3) Prior to the commencement of negotiations, review any contractor economic bargaining parameters which are an exception to DOE/NNSA policy (e.g., reimbursement of enhanced benefits in the context of workforce restructuring), could involve other items of special interest to the Government (e.g., changes to any pension or other benefit plan), or otherwise upon request of the DOE/NNSA Head of contracting activity (HCA).

Suggested comment from Kathleen Ellis for Argonne National Laboratory

Included comments:

SME draker@anl.gov
Other than the example provided, we are unsure what is meant by "economic bargaining parameters which are an exception to DOE policy". It would be helpful to have some additional guidance as to what is meant by this term.

Suggested comment from John Kasprowicz for Argonne Site Office

Included comments:

SME draker@anl.gov
Other than the example provided, we are unsure what is meant by "economic bargaining parameters which are an exception to DOE policy". It would be helpful to have some additional guidance as to what is meant by this term.

(4) Reviews, upon request of the HCAs, changes to contractor proposals during the term of collective bargaining.

(5) In consultation with COs, review the Contractor Labor Relations Reports of Settlement uploaded by Contractors into iBenefits on a quarterly basis.

b. Director, Contractor Human Resources Policy Division for DOE and Manager, NNSA Contractor Human Resources Division (NNSA-CHRD) for NNSA.

(1) Prior to the commencement of negotiations, review any contractor economic bargaining parameters which are an exception to DOE/NNSA policy (e.g., reimbursement of enhanced benefits in the context of workforce restructuring), could involve other items of special interest to the Government (e.g., changes to any pension or other benefit plan), or otherwise upon request of the HCA.

(2) While negotiations for a new CBA are ongoing, review, upon request of the HCAs, changes to contractor proposals.

Major comment from Cathy Tullis for Headquarters NA

Included comments:

Henry Van Dyke for NA-General Counsel
Should remove references to NNSA elements, should refer to DOE CHR and DOE HCAs. BOP-003.0601R1, Contractor Human Resources (CHR) Policy and Approval of Actions Process will continue to apply to the internal processes utilized to approve collective bargaining parameters submitted by the contractors.

Response:
Accept

Ken West for NA-Acquisition and Project Management
Chapter I, Section 4. Responsibilities b, c and d: References to NNSA elements should be removed. Language should refer only to DOE CHR, DOE HCAs and DOE CO's. BOP-003.0601R1, Contractor Human Resources (CHR) Policy and Approval of Actions Process will continue to apply to the internal processes utilized to approve collective bargaining parameters submitted by the contractors.

Response:
Accept

Suggested comment from Jennifer Kelley for Headquarters SC

Paragraph 4(b)(1) - The paragraph states the same role as GC-63 in paragraph 4(a)(3). It is not clear why they used reference to workforce restriction. Clarification should be made that MA-612/NNSA-CHRD should be involved only as it pertains to parameters involving changes to pension or enhanced benefits. Recommend adding consultation with GC-63 on contingency strikes, work stoppages.

Response:
Reject MA-612's involvement relates to all aspects of contractor compensation. GC-63 has full responsibility for Labor Relations and will consult with MA as needed; however, such a subparagraph is not necessary as MA does not have this responsibility.

Major comment from Ken West for NA-Acquisition and Project Management
Chapter I, Section 4. Responsibilities b, c and d: References to NNSA elements should be removed. Language should refer only to DOE CHR, DOE HCAs and DOE CO's. BOP-003.0601R1, Contractor Human Resources (CHR) Policy and Approval of Actions Process will continue to apply to the internal processes utilized to approve collective bargaining parameters submitted by the contractors.

Response:
Accept

Major comment from Henry Van Dyke for NA-General Counsel
Should remove references to NNSA elements, should refer to DOE CHR and DOE HCAs. BOP-003.0601R1, Contractor Human Resources (CHR) Policy and Approval of Actions Process will continue to apply to the internal processes utilized to approve collective bargaining parameters submitted by the contractors.

Response:
Accept

c. Heads of Contracting Activities (HCA).

(1) For cost reimbursement purposes, review and approve the contractor's proposed economic bargaining parameters, including those for pension and medical benefit costs, prior to the Contractor entering into the collective bargaining process.

(2) Prior to the commencement of negotiations, provide the Office of the Assistant General Counsel for Pension and Labor Law/NNSA-GC and the Director of the Contractor Human Resources Policy Division/NNSA-CHRD the following for review: proposed contractor economic bargaining parameters which are an exception to DOE/NNSA policy (e.g., reimbursement of enhanced benefits in the context of workforce restructuring), could involve other items of special interest to the Government (e.g., changes to any pension or other benefit plan), or otherwise at the discretion of the HCA.

Major comment from Cathy Tullis for Headquarters NA

Included comments:

Ken West for NA-Acquisition and Project Management
Chapter I, Section 4. Responsibilities b, c and d: References to NNSA elements should be removed. Language should refer only to DOE CHR, DOE HCAs and DOE CO's. BOP-003.0601R1, Contractor Human Resources (CHR) Policy and Approval of Actions Process will continue to apply to the internal processes utilized to approve collective bargaining parameters submitted by the contractors.

Response:
Accept

Ken West for NA-Acquisition and Project Management
Chapter I, Section 4. Responsibilities c. (1)-(3): These requirements should not be applicable to NNSA. BOP-003.0601R1 will apply to NNSA.

Response:
Accept

Henry Van Dyke for NA-General Counsel
Should remove references to NNSA elements, should refer to DOE CHR, DOE HCAs and DOE COs. BOP-003.0601R1, Contractor Human Resources (CHR) Policy and Approval of Actions Process will continue to apply to the internal processes utilized to approve collective bargaining parameters submitted by the contractors.

Response:
Accept

Major comment from Ken West for NA-Acquisition and Project Management
Chapter I, Section 4. Responsibilities b, c and d: References to NNSA elements should be removed. Language should refer only to DOE CHR, DOE HCAs and DOE CO's. BOP-003.0601R1, Contractor Human Resources (CHR) Policy and Approval of Actions Process will continue to apply to the internal processes utilized to approve collective bargaining parameters submitted by the contractors.

Response:
Accept

Chapter I, Section 4. Responsibilities c. (1)-(3): These requirements should not be applicable to NNSA. BOP-003.0601R1 will apply to NNSA.

Response:
Accept

Major comment from Henry Van Dyke for NA-General Counsel
Should remove references to NNSA elements, should refer to DOE CHR, DOE HCAs and DOE COs. BOP-003.0601R1, Contractor Human Resources (CHR) Policy and Approval of Actions Process will continue to apply to the internal processes utilized to approve collective bargaining parameters submitted by the contractors.

Response:
Accept

(3) Consult as necessary with the Director of the Contractor Human Resources Policy Division/NNSA-CHRD and the Office of the Assistant General Counsel for Pension and Labor Law/NNSA-GC on information received from COs during collective bargaining negotiations regarding any proposal which can be calculated to affect reimbursable costs under this Contract, are an exception to DOE/NNSA policy (e.g., reimbursement of enhanced benefits in the context of workforce restructuring), or could involve other items of special interest to the Government (e.g., changes to any pension or other benefit plan), prior to the contractor submitting to or agreeing to any such proposal with the labor organization representing its employees.

(4) Consult regularly with COs during the term of collective bargaining agreements to stay abreast of information related to contractor labor relations, such as Reports of Settlement uploaded to iBenefits on a quarterly basis, as well as other matters of interest and concern to DOE.

Major comment from Cathy Tullis for Headquarters NA

Included comments:

Henry Van Dyke for NA-General Counsel

should remove references to NNSA elements, should refer to DOE CHR, DOE HCAs and DOE COs. BOP-003.0601R1, Contractor Human Resources (CHR) Policy and Approval of Actions Process will continue to apply to the internal processes utilized to approve collective bargaining parameters submitted by the contractors.

EXCEPT: 4.c.4 through 6 should still apply to NNSA. But delete 4.c.5. Instead impose that particular requirement on the COs in Section 4.d.5: Change to say "Notify the Director of the Contractor Human Resources Policy Division/NNSA-CHRD and the Office of the Assistant General Counsel for Pension and Labor Law/NNSA-GC of any grievances, arbitrations, or legal or judicial proceedings, and any other significant labor relations issues as soon as possible after becoming aware of them, and provide any documents relevant to such proceedings." Rationale: it would be better to provide this information directly to the people who may need to do some follow up work on the issue (GC and CHRD) rather than submitting it to the HCA who may not know what to do with it.

Response:
Accept with Modifications All references to NNSA in this section have been removed.

Ken West for NA-Acquisition and Project Management
Chapter I, Section 4. Responsibilities c. (4) & (6) : These requirements can apply to the NNSA HCA.

Response:
Reject All references to NNSA in this section have been removed.

Ken West for NA-Acquisition and Project Management
Chapter I, Section 4. Responsibilities c. (1)-(3): These requirements should not be applicable to NNSA. BOP-003.0601R1 will apply to NNSA.

Response:
Accept

Suggested comment from Cathy Tullis for Headquarters NA

Included comments:

SME burke27@llnl.gov

c.(3) The requirement for consultation during collective bargaining negotiations regarding "any proposal which can be calculated to affect reimbursable costs" prior to the contractor "submitting to or agreeing to any such proposal with the labor organization representing its employees" makes it impossible to bargain in good faith. While paragraphs (1) and (2) contain requirements for approval of "parameters" before bargaining begins - which appear reasonable - paragraph (3) goes beyond this to require approval of any agreement reached in the course of negotiations. Negotiations of a collective bargaining agreement can only go forward if the representatives in attendance have authority to bind their principals. If this change is added, either the Heads of Contracting Activities will need to attend and participate in every bargaining session, or contractors will be contractually required to bargain in bad faith, in violation of the National Labor Relations Act.

If parameters have been agreed to as required by C.1, this should mean that contractor consults with DOE only if contractor goes beyond these agreed upon parameters. Current Contract 44 does not require DOE approval (except pension and benefit plan changes), only notification if there are changes to parameters/items that could change costs to the Contract.

Response:

Accept with Modifications Language has been changed to address these concerns.

Suggested comment from Robert Park for Lawrence Livermore National Laboratory

Included comments:

SME burke27@llnl.gov

c.(3) The requirement for consultation during collective bargaining negotiations regarding "any proposal which can be calculated to affect reimbursable costs" prior to the contractor "submitting to or agreeing to any such proposal with the labor organization representing its employees" makes it impossible to bargain in good faith. While paragraphs (1) and (2) contain requirements for approval of "parameters" before bargaining begins - which appear reasonable - paragraph (3) goes beyond this to require approval of any agreement reached in the course of negotiations. Negotiations of a collective bargaining agreement can only go forward if the representatives in attendance have authority to bind their principals. If this change is added, either the Heads of Contracting Activities will need to attend and participate in every bargaining session, or contractors will be contractually required to bargain in bad faith, in violation of the National Labor Relations Act.

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Response:
Accept with Modifications Language has been changed to address these concerns.

Suggested comment from Walter Cyganowski for Livermore Field Office

Included comments:

SME burke27@llnl.gov

c.(3) The requirement for consultation during collective bargaining negotiations regarding "any proposal which can be calculated to affect reimbursable costs" prior to the contractor "submitting to or agreeing to any such proposal with the labor organization representing its employees" makes it impossible to bargain in good faith. While paragraphs (1) and (2) contain requirements for approval of "parameters" before bargaining begins - which appear reasonable - paragraph (3) goes beyond this to require approval of any agreement reached in the course of negotiations. Negotiations of a collective bargaining agreement can only go forward if the representatives in attendance have authority to bind their principals. If this change is added, either the Heads of Contracting Activities will need to attend and participate in every bargaining session, or contractors will be contractually required to bargain in bad faith, in violation of the National Labor Relations Act.

If parameters have been agreed to as required by C.1, this should mean that contractor consults with DOE only if contractor goes beyond these agreed upon parameters. Current Contract 44 does not require DOE approval (except pension and benefit plan changes), only notification if there are changes to parameters/items that could change costs to the Contract.

Response:
Accept with Modifications Language has been changed to address these concerns.

Major comment from Ken West for NA-Acquisition and Project Management
Chapter I, Section 4. Responsibilities c. (1)-(3): These requirements should not be applicable to NNSA. BOP-003.0601R1 will

apply to NNSA.

Response:
Accept

Chapter I, Section 4. Responsibilities c. (4) & (6) : These requirements can apply to the NNSA HCA.

Response:
Reject All references to NNSA in this section have been removed.

Major comment from Henry Van Dyke for NA-General Counsel

should remove references to NNSA elements, should refer to DOE CHR, DOE HCAs and DOE COs. BOP-003.0601R1, Contractor Human Resources (CHR) Policy and Approval of Actions Process will continue to apply to the internal processes utilized to approve collective bargaining parameters submitted by the contractors.

EXCEPT: 4.c.4 through 6 should still apply to NNSA. But delete 4.c.5. Instead impose that particular requirement on the COs in Section 4.d.5: Change to say "Notify the Director of the Contractor Human Resources Policy Division/NNSA-CHRD and the Office of the Assistant General Counsel for Pension and Labor Law/NNSA-GC of any grievances, arbitrations, or legal or judicial proceedings, and any other significant labor relations issues as soon as possible after becoming aware of them, and provide any documents relevant to such proceedings." Rationale: it would be better to provide this information directly to the people who may need to do some follow up work on the issue (GC and CHRD) rather than submitting it to the HCA who may not know what to do with it.

Response:
Accept with Modifications All references to NNSA in this section have been removed.

(5) Notify the Office of the Assistant General Counsel for Pension and Labor Law/NNSA-GC of any National Labor Relations Board charges, any grievances, arbitrations, or legal or judicial proceedings, and any other significant labor relations issues as soon as possible after becoming aware of them, and provide any documents relevant to such proceedings.

(6) Provide timely information to the Office of the Assistant General Counsel for Pension and Labor Law/NNSA-GC, and other cognizant Departmental elements at HQ, concerning any other contractor labor issues.

Major comment from Kathleen Ellis for Argonne National Laboratory

Included comments:

SME draker@anl.gov
Number 5: There is not a current notification requirement for contractor grievances. There are far more grievances than NLRB charges, arbitrations and legal and judicial proceedings. We believe it is unnecessary to create a notification requirement for every filed grievance.

Major comment from John Kasprowicz for Argonne Site Office

Included comments:

SME draker@anl.gov

Number 5: There is not a current notification requirement for contractor grievances. There are far more grievances than NLRB charges, arbitrations and legal and judicial proceedings. We believe it is unnecessary to create a notification requirement for every filed grievance.

Major comment from Marilyn Jacobs for Headquarters EM

Included comments:

Delegate Paul H Allen for Idaho Operations Office (EM)

It is my opinion that this requires too much oversight by HQ on activity "in the weeds" in the field. I agree with NLRB charges, legal/judicial proceedings, and "any other SIGNIFICANT labor relations issue" being report to the Office of the Assistant General Counsel for Pension and Labor Law, but I do not agree that all grievances and arbitrations should be reported. Grievances are very often minor actions that are resolved, settled, or withdrawn with no impact to the relationship between the contractor and the Union, and would constitute a burdensome practice to require all grievances to be reported. Likewise, many arbitrations are simple matters without signficant consequence to the contract, to the DOE mission, or to the Contractor/Labor relationship. I could support identifying "significant arbitrations" for reporting to GC, such as items that could be calculated to increase the long-term costs to the government, would substantively alter the contractual agreement, could result in a sizeable monetary settlement by the contractor, or similar, but I can't see reporting every arbitration over a time-card related disciplinary action and the like.

I would recommend re-wording this to read as follows:

(5) Notify the Office of the Assistant General Counsel for Pension and Labor Law/NNSA-GC of an National Labor Relations Board charges, legal or judicial proceedings, and any signficant arbitrations or other signficant labor relations issues as soon as possible after becoming aware of them, and provide any documents relevant to such proceedings.

Response:
Accept with Modifications To address these concerns, the language has been changed to modify the type of "grievances" to be reported to GC-63.

Major comment from Cathy Tullis for Headquarters NA

Included comments:

Ken West for NA-Acquisition and Project Management

Chapter I, Section 4. Responsibilities c. (5) : Recommend deleting 4.c.5 as an HCA requirement. Instead impose that particular requirement on the COs in Section 4.d.5: Change to say "Notify the Director of the Contractor Human Resources Policy Division/NNSA-CHRB and the Office of the Assistant General Counsel for Pension and Labor Law/NNSA-GC of any grievances, arbitrations, or legal or judicial proceedings, and any other significant labor relations issues as soon as possible after becoming aware of them, and provide any documents relevant to such proceedings." **Rationale:** It would be better to provide this information directly to the people who may need to do some follow up work on the issue (GC and CHRB) rather than submitting it to the HCA who may not know what to do with it. In addition, placing this requirement on the HCA could become burdensome for the "routine" issues

Response:
Accept with Modifications Language has been changed to address these concerns.

Ken West for NA-Acquisition and Project Management
Chapter I, Section 4. Responsibilities c. (4) & (6) : These requirements can apply to the NNSA HCA.

Response:
Reject All references to NNSA in this section have been removed.

Suggested comment from Cathy Tullis for Headquarters NA

Included comments:

SME burke27@llnl.gov

c.(5): This paragraph requires Heads of Contracting Activities to report "any National Labor Relations Board charges, any grievances, any arbitrations, or legal or judicial proceedings, or any other significant labor relations issues as soon as possible after becoming aware of them, and provide any documents relevant to such proceedings." This may be somewhat broader than current requirements.

Suggest eliminating "grievance" or clarify that this does not include internal grievances spelled out within collective bargaining agreements or personnel policy.

Clarify what is included under "judicial proceedings". Currently we alert DOE about lawsuits filed and state or federal agency investigations. Suggest this would ***not*** *include unemployment claims, workers' compensation, and wage and hour complaints with local department of labor.*

Response:
Accept with Modifications HCA requirement removed. Language explaining what grievances should be reported is added. Judicial proceedings has the same definition as found in 10 CFR 719.

Major comment from PK Niyogi for Headquarters NE

Included comments:

Delegate Paul H Allen for Idaho Operations Office (NE)

RE: (5)

It is my opinion that this requires too much oversight by HQ on activity "in the weeds" in the field. I agree with NLRB charges, legal/judicial proceedings, and "any other SIGNIFICANT labor relations issue" being report to the Office of the Assistant General Counsel for Pension and Labor Law, but I do not agree that all grievances and arbitrations should be reported. Grievances are very often minor actions that are resolved, settled, or withdrawn with no impact to the relationship between the contractor and the Union, and would constitute a burdensome practice to require all grievances to be reported. Likewise, many arbitrations are simple matters without significant consequence to the contract, to the DOE mission, or to the Contractor/Labor relationship. I could support identifying "significant arbitrations" for reporting to GC, such as items that could be calculated to increase the long-term costs to the government, would substantively alter the contractual agreement, could result in a sizeable monetary settlement by the contractor, or similar, but I can't see reporting every arbitration over a time-card related disciplinary action and the like.

I would recommend re-wording this to read as follows:

(5) Notify the Office of the Assistant General Counsel for Pension and Labor Law/NNSA-GC of an National Labor Relations Board charges, legal or judicial proceedings, and any significant arbitrations or other significant labor relations issues as soon as possible after becoming aware of them, and provide any documents relevant to such proceedings.

Response:

Accept with Modifications To address these concerns, the language has been changed to modify the type of "grievances" to be reported to GC-63.

Suggested comment from Jennifer Kelley for Headquarters SC

Paragraph 4(c)(5) - This is a new requirement for the HCA to report on all grievances, arbitrations or legal or judicial proceeding. Will there be a designated form or format expected for these reports?

Response:
Accept HCA requirement removed.

Major comment from David Neil for Idaho Operations Office (EM)

Included comments:

Delegate Paul H Allen for Idaho Operations Office (EM)

It is my opinion that this requires too much oversight by HQ on activity "in the weeds" in the field. I agree with NLRB charges, legal/judicial proceedings, and "any other SIGNIFICANT labor relations issue" being report to the Office of the Assistant General Counsel for Pension and Labor Law, but I do not agree that all grievances and arbitrations should be reported. Grievances are very often minor actions that are resolved, settled, or withdrawn with no impact to the relationship between the contractor and the Union, and would constitute a burdensome practice to require all grievances to be reported. Likewise, many arbitrations are simple matters without signficant consequence to the contract, to the DOE mission, or to the Contractor/Labor relationship. I could support identifying "significant arbitrations" for reporting to GC, such as items that could be calculated to increase the long-term costs to the government, would substantively alter the contractual agreement, could result in a sizeable monetary settlement by the contractor, or similar, but I can't see reporting every arbitration over a time-card related disciplinary action and the like.

I would recommend re-wording this to read as follows:

(5) Notify the Office of the Assistant General Counsel for Pension and Labor Law/NNSA-GC of an National Labor Relations Board charges, legal or judicial proceedings, and any signficant arbitrations or other signficant labor relations issues as soon as possible after becoming aware of them, and provide any documents relevant to such proceedings.

Response:
Accept with Modifications To address these concerns, the language has been changed to modify the type of "grievances" to be reported to GC-63.

Major comment from David Neil for Idaho Operations Office (NE)

Included comments:

Delegate Paul H Allen for Idaho Operations Office (NE)

RE: (5)

It is my opinion that this requires too much oversight by HQ on activity "in the weeds" in the field. I agree with NLRB charges, legal/judicial proceedings, and "any other SIGNIFICANT labor relations issue" being report to the Office of the

Assistant General Counsel for Pension and Labor Law, but I do not agree that all grievances and arbitrations should be reported. Grievances are very often minor actions that are resolved, settled, or withdrawn with no impact to the relationship between the contractor and the Union, and would constitute a burdensome practice to require all grievances to be reported. Likewise, many arbitrations are simple matters without significant consequence to the contract, to the DOE mission, or to the Contractor/Labor relationship. I could support identifying "significant arbitrations" for reporting to GC, such as items that could be calculated to increase the long-term costs to the government, would substantively alter the contractual agreement, could result in a sizeable monetary settlement by the contractor, or similar, but I can't see reporting every arbitration over a time-card related disciplinary action and the like.

I would recommend re-wording this to read as follows:

(5) Notify the Office of the Assistant General Counsel for Pension and Labor Law/NNSA-GC of an National Labor Relations Board charges, legal or judicial proceedings, and any significant arbitrations or other significant labor relations issues as soon as possible after becoming aware of them, and provide any documents relevant to such proceedings.

Response:
Accept with Modifications To address these concerns, the language has been changed to modify the type of "grievances" to be reported to GC-63.

Suggested comment from Robert Park for Lawrence Livermore National Laboratory

Included comments:

SME burke27@llnl.gov

c.(5): This paragraph requires Heads of Contracting Activities to report "any National Labor Relations Board charges, any grievances, any arbitrations, or legal or judicial proceedings, or any other significant labor relations issues as soon as possible after becoming aware of them, and provide any documents relevant to such proceedings." This may be somewhat broader than current requirements.

Suggest eliminating "grievance" or clarify that this does not include internal grievances spelled out within collective bargaining agreements or personnel policy.

*Clarify what is included under "judicial proceedings". Currently we alert DOE about lawsuits filed and state or federal agency investigations. Suggest this would **not** include unemployment claims, workers' compensation, and wage and hour complaints with local department of labor.*

Response:
Accept with Modifications HCA requirement removed. Language explaining what grievances should be reported is added. Judicial proceedings has the same definition as found in 10 CFR 719.

Suggested comment from Walter Cyganowski for Livermore Field Office

Included comments:

SME burke27@llnl.gov

c.(5): This paragraph requires Heads of Contracting Activities to report "any National Labor Relations Board charges, any grievances, any arbitrations, or legal or judicial proceedings, or any other significant labor relations issues as soon as possible after becoming aware of them, and provide any documents relevant to such proceedings." This may be somewhat broader than current requirements.

Suggest eliminating "grievance" or clarify that this does not include internal grievances spelled out within collective bargaining agreements or personnel policy.

*Clarify what is included under "judicial proceedings". Currently we alert DOE about lawsuits filed and state or federal agency investigations. Suggest this would **not** include unemployment claims, workers' compensation, and wage and hour complaints with local department of labor.*

Response:
Accept with Modifications HCA requirement removed. Language explaining what grievances should be reported is added. Judicial proceedings has the same definition as found in 10 CFR 719.

Major comment from Ken West for NA-Acquisition and Project Management
Chapter I, Section 4. Responsibilities c. (4) & (6) : These requirements can apply to the NNSA HCA.

Response:
Reject All references to NNSA in this section have been removed.

Chapter I, Section 4. Responsibilities c. (5) : Recommend deleting 4.c.5 as an HCA requirement. Instead impose that particular requirement on the COs in Section 4.d.5: Change to say "Notify the Director of the Contractor Human Resources Policy Division/NNSA-CHRB and the Office of the Assistant General Counsel for Pension and Labor Law/NNSA-GC of any grievances, arbitrations, or legal or judicial proceedings, and any other significant labor relations issues as soon as possible after becoming aware of them, and provide any documents relevant to such proceedings."
Rationale: It would be better to provide this information directly to the people who may need to do some follow up work on the issue (GC and CHRB) rather than submitting it to the HCA who may not know what to do with it. In addition, placing this requirement on the HCA could become burdensome for the "routine" issues

Response:
Accept with Modifications Language has been changed to address these concerns.

d. Contracting Officers (COs).

(1) Receive and review contractor's proposed economic bargaining parameters.

(2) Submit to the HCA for approval, along with a memorandum setting forth the recommendation of the CO, the contractor's proposed economic bargaining parameters.

Major comment from Marilyn Jacobs for Headquarters EM

Included comments:

SME Cindy.Oliver@rl.doe.gov
Suggest changing text to the following: Submit to the HCA for approval, along with **written documentation** ~~**a memorandum**~~ setting forth the recommendation of the CO, the contractor's proposed economic bargaining parameters.

Response:
Accept

Suggested comment from Marilyn Jacobs for Headquarters EM

Included comments:

Delegate Paul H Allen for Idaho Operations Office (EM)

This process is not as applicable at Idaho, particularly on the NE side, as it might be at other sites by virtue of having local HCA authority. At present, the HCA has delegated the authority to approve economic bargaining parameters to the CO, and hence the proposed process either requires Idaho to change it's process, or work around it in apparent disregard for the Order. I recommend that rather than defining the process whereby the CO and the HCA interact, that instead there be a reference to the respective delegations of authority and internal processes established by each Program Office for approving economic parameters. Therefore, (2) might read something like:

(2) Ensure submission and approval of economic bargaining parameters consistent with the dictates of the respective Program Office and the HCA.

Response:
Reject Nothing in this Order precludes the HCA from delegating authority.

Major comment from Cathy Tullis for Headquarters NA

Included comments:

Ken West for NA-Acquisition and Project Management
Chapter I, Section 4. Responsibilities b, c and d: References to NNSA elements should be removed. Language should refer only to DOE CHR, DOE HCAs and DOE CO's. BOP-003.0601R1, Contractor Human Resources (CHR) Policy and Approval of Actions Process will continue to apply to the internal processes utilized to approve collective bargaining parameters submitted by the contractors.

Response:
Accept

Henry Van Dyke for NA-General Counsel
Should remove references to NNSA elements, should refer to DOE CHR, DOE HCAs and DOE COs. BOP-003.0601R1, Contractor Human Resources (CHR) Policy and Approval of Actions Process will continue to apply to the internal processes utilized to approve collective bargaining parameters submitted by the contractors.

Response:
Accept

Suggested comment from PK Niyogi for Headquarters NE

Included comments:

Delegate Paul H Allen for Idaho Operations Office (NE)

RE: (2)

This process is not as applicable at Idaho, particularly on the NE side, as it might be at other sites by virtue of having local HCA authority. At present, the HCA has delegated the authority to approve economic bargaining parameters to the CO, and hence the proposed process either requires Idaho to change its process, or work around it in apparent disregard for the Order. I recommend that rather than defining the process whereby the CO and the HCA interact, that instead there be a reference to the respective delegations of authority and internal processes established by each Program Office for approving economic parameters. Therefore, (2) might read something like:

(2) Ensure submission and approval of economic bargaining parameters consistent with the dictates of the respective Program Office and the HCA.

Response:
Reject Nothing in this Order precludes the HCA from delegating authority.

Suggested comment from David Neil for Idaho Operations Office (EM)

Included comments:

Delegate Paul H Allen for Idaho Operations Office (EM)

This process is not as applicable at Idaho, particularly on the NE side, as it might be at other sites by virtue of having local HCA authority. At present, the HCA has delegated the authority to approve economic bargaining parameters to the CO, and hence the proposed process either requires Idaho to change it's process, or work around it in apparent disregard for the Order. I recommend that rather than defining the process whereby the CO and the HCA interact, that instead there be a reference to the respective delegations of authority and internal processes established by each Program Office for approving economic parameters. Therefore, (2) might read something like:

(2) Ensure submission and approval of economic bargaining parameters consistent with the dictates of the respective Program Office and the HCA.

Response:
Reject Nothing in this Order precludes the HCA from delegating authority.

Suggested comment from David Neil for Idaho Operations Office (NE)

Included comments:

Delegate Paul H Allen for Idaho Operations Office (NE)

RE: (2)

This process is not as applicable at Idaho, particularly on the NE side, as it might be at other sites by virtue of having local HCA authority. At present, the HCA has delegated the authority to approve economic bargaining parameters to the CO, and hence the proposed process either requires Idaho to change its process, or work around it in apparent disregard for the Order. I recommend that rather than defining the process whereby the CO and the HCA interact, that instead there be a reference to the respective delegations of authority and internal processes established by each Program Office for approving economic parameters. Therefore, (2) might read something like:

(2) Ensure submission and approval of economic bargaining parameters consistent with the dictates of the respective Program Office and the HCA.

Response:
Reject Nothing in this Order precludes the HCA from delegating authority.

Major comment from Ken West for NA-Acquisition and Project Management
Chapter I, Section 4. Responsibilities b, c and d: References to NNSA elements should be removed. Language should refer only to DOE CHR, DOE HCAs and DOE CO's. BOP-003.0601R1, Contractor Human Resources (CHR) Policy and Approval of Actions Process will continue to apply to the internal processes utilized to approve collective bargaining parameters submitted by the contractors.

Response:
Accept

Major comment from Henry Van Dyke for NA-General Counsel
Should remove references to NNSA elements, should refer to DOE CHR, DOE HCAs and DOE COs. BOP-003.0601R1, Contractor Human Resources (CHR) Policy and Approval of Actions Process will continue to apply to the internal processes utilized to approve collective bargaining parameters submitted by the contractors.

Response:
Accept

Major comment from Jodi Dawson for Richland Operations Office

Included comments:

SME Cindy.Oliver@rl.doe.gov
Suggest changing text to the following: Submit to the HCA for approval, along with **written documentation** ~~**a memorandum**~~ setting forth the recommendation of the CO, the contractor's proposed economic bargaining parameters.

Response:
Accept

(3) Consult with the HCA on information received from the contractor during collective bargaining negotiations regarding any proposal which can be calculated to affect reimbursable costs under this Contract, are an exception to DOE/NNSA policy (e.g., reimbursement of enhanced benefits in the context of workforce restructuring), or could involve other items of special interest to the Government (e.g., changes to any pension or other benefit plan), prior to the contractor submitting to or agreeing to any such proposal with the labor organization representing its employees.

Suggested comment from Cathy Tullis for Headquarters NA

Included comments:

SME burke27@llnl.gov

d. (3) Similar to c. (3) above, this paragraph requires the Contracting Officer to consult with the Heads of Contracting Activities "on information received from the contractor during collective bargaining negotiations regarding any proposal which can be calculated to affect reimbursable costs under this Contract ... prior to the contractor submitting to or agreeing to any such proposal with the labor organization." As above, while paragraphs (1) and (2) contain requirements for approval of "parameters" before bargaining begins - which appear reasonable - paragraph (3) goes beyond this to require approval of any agreement reached in the course of negotiations. Negotiations of a collective bargaining agreement can only go forward if the representatives in attendance have authority to bind their principals. If this change is added, either the Heads of Contracting Activities or the contracting Officer will need to attend and participate in every bargaining session, or contractors will be contractually required to bargain in bad faith, in violation of the National Labor Relations Act.

If parameters have been agreed to as required by C.1, this should mean that contractor consults with DOE on if contractor goes beyond these agreed upon parameters. Current Contract 44 does not require DOE approval (except pension and benefit plan changes), only notification if parameters/items that could change costs to the

Contract.

Response:
Accept with Modifications Language has been changed to address these concerns.

Suggested comment from Robert Park for Lawrence Livermore National Laboratory

Included comments:

SME burke27@llnl.gov

d. (3) Similar to c. (3) above, this paragraph requires the Contracting Officer to consult with the Heads of Contracting Activities "on information received from the contractor during collective bargaining negotiations regarding any proposal which can be calculated to affect reimbursable costs under this Contract ... prior to the contractor submitting to or agreeing to any such proposal with the labor organization." As above, while paragraphs (1) and (2) contain requirements for approval of "parameters" before bargaining begins - which appear reasonable - paragraph (3) goes beyond this to require approval of any agreement reached in the course of negotiations. Negotiations of a collective bargaining agreement can only go forward if the representatives in attendance have authority to bind their principals. If this change is added, either the Heads of Contracting Activities or the contracting Officer will need to attend and participate in every bargaining session, or contractors will be contractually required to bargain in bad faith, in violation of the National Labor Relations Act.

If parameters have been agreed to as required by C.1, this should mean that contractor consults with DOE on if contractor goes beyond these agreed upon parameters. Current Contract 44 does not require DOE approval (except pension and benefit plan changes), only notification if parameters/items that could change costs to the Contract.

Response:
Accept with Modifications Language has been changed to address these concerns.

Suggested comment from Walter Cyganowski for Livermore Field Office

Included comments:

SME burke27@llnl.gov

d. (3) Similar to c. (3) above, this paragraph requires the Contracting Officer to consult with the Heads of Contracting Activities "on information received from the contractor during collective bargaining negotiations regarding any proposal which can be calculated to affect reimbursable costs under this Contract ... prior to the contractor submitting to or agreeing to any such proposal with the labor organization." As above, while paragraphs (1) and (2) contain requirements for approval of "parameters" before bargaining begins - which appear reasonable - paragraph (3) goes beyond this to require approval of any agreement reached in the course of negotiations. Negotiations of a collective bargaining agreement can only go forward if the representatives in attendance have authority to bind their principals. If this change is added, either the Heads of Contracting Activities or the contracting Officer will need to attend and participate in every bargaining session, or contractors will be contractually required to bargain in bad faith, in violation of the National Labor Relations Act.

If parameters have been agreed to as required by C.1, this should mean that contractor consults with DOE on if contractor goes beyond these agreed upon parameters. Current Contract 44 does not require DOE approval

(except pension and benefit plan changes), only notification if parameters/items that could change costs to the Contract.

Response:
Accept with Modifications Language has been changed to address these concerns.

(4) Consult regularly with the HCA during the term of collective bargaining agreements to stay abreast of information related to contractor labor relations, such as Reports of Settlement uploaded to iBenefits on a quarterly basis, as well as other matters of interest and concern to DOE.

(5) Notify the HCA of any National Labor Relations Board charges, any grievances, arbitrations, or legal or judicial proceedings, and any other significant labor relations issues as soon as possible after becoming aware of them, and provide any documents relevant to such proceedings.

(6) Provide timely information to the HCA concerning any other contractor labor issues.

Major comment from Kathleen Ellis for Argonne National Laboratory

Included comments:

SME draker@anl.gov
Number 5: There is not a current notification requirement for contractor grievances. There are far more grievances than NLRB charges, arbitrations and legal and judicial proceedings. We believe it is unnecessary to create a notification requirement for every filed grievance.

Major comment from John Kasprowicz for Argonne Site Office

Included comments:

SME draker@anl.gov
Number 5: There is not a current notification requirement for contractor grievances. There are far more grievances than NLRB charges, arbitrations and legal and judicial proceedings. We believe it is unnecessary to create a notification requirement for every filed grievance.

Major comment from Marilyn Jacobs for Headquarters EM

Included comments:

Delegate Paul H Allen for Idaho Operations Office (EM)
Similar to my comment above, it is my opinion that the HCA--like GC--need not have every grievance and arbitration reported to them, but rather only those items which can be calculated to cost significant money, impact mission achievement, alter the nature of the contract, etc.

Response:
Accept with Modifications Language has been changed to address these concerns.

SME Cindy.Oliver@rl.doe.gov
Add next text as follows: Consult with GC-63 Site Lead on issues pertaining to Contractor Labor Relations.

Response:

Accept with Modifications Language has been added to address this concern. Designee has been added to CO to clarify that the CO may have others consulting with GC-63 on Labor Relations.

Suggested comment from Marilyn Jacobs for Headquarters EM

Included comments:

Delegate Paul H Allen for Idaho Operations Office (EM)
(4) is written awkwardly, suggesting that the CO is obtaining information FROM the HCA in order to stay abreast, when I believe the intent is for the CO to provide information TO the HCA. Should probably read: "Consult regularly with the HCA during the term of collective bargaining agreements to ensure that the HCA is cognizant of information related to contractor labor relations..."

Response:
Accept

Major comment from Cathy Tullis for Headquarters NA

Included comments:

Henry Van Dyke for NA-General Counsel

In Section 4.d.5: Change to say "Notify the Director of the Contractor Human Resources Policy Division/NNSA-CHRD and the Office of the Assistant General Counsel for Pension and Labor Law/NNSA-GC of any grievances, arbitrations, or legal or judicial proceedings, and any other significant labor relations issues as soon as possible after becoming aware of them, and provide any documents relevant to such proceedings." Rationale: it would be better to provide this information directly to the people who may need to do some follow up work on the issue (GC and CHRD) rather than submitting it to the HCA who may not know what to do with it.

Also, 4.d.4 should apply to NNSA, 4.d.5 as modified above should apply to NNSA and 4.d.6 should apply to NNSA.

Response:
Accept with Modifications Language has been changed to address these concerns. All references to NNSA in this section have been removed.

Ken West for NA-Acquisition and Project Management
Chapter I, Section 4. Responsibilities d. (5): This could apply to NNSA if it is revised based on previous comment for Section 4.c.(5).

Response:
Reject All references to NNSA in this section have been removed.

Suggested comment from Cathy Tullis for Headquarters NA

Included comments:

SME burke27@llnl.gov

d.(5): c.(5): This paragraph requires Contracting Officers to report "any National Labor Relations Board charges, any grievances, any arbitrations, or legal or judicial proceedings, or any other significant labor relations issues as soon as

possible after becoming aware of them, and provide any documents relevant to such proceedings." This appears to be broader than current requirements.

Suggest eliminating "grievance" or clarify that this does not include internal grievances spelled out within collective bargaining agreements or personnel policy.

*Clarify what is included under "judicial proceedings". Currently we alert DOE about lawsuits filed and state or federal agency investigations. Suggest this would **not** include unemployment claims, workers' compensation, and wage and hour complaints with local department of labor.*

Response:
Accept with Modifications Language has been changed to address these concerns.

Ken West for NA-Acquisition and Project Management

Chapter I, Section 4. Responsibilities d. (4) & (6): This requirement could apply to NNSA CO's

Response:
Reject All references to NNSA in this section have been removed.

Suggested comment from PK Niyogi for Headquarters NE

Included comments:

Delegate Paul H Allen for Idaho Operations Office (NE)

(4) is written awkwardly, suggesting that the CO is obtaining information FROM the HCA in order to stay abreast, when I believe the intent is for the CO to provide information TO the HCA. Should probably read: "Consult regularly with the HCA during the term of collective bargaining agreements to ensure that the HCA is cognizant of information related to contractor labor relations..."

Response:
Accept with Modifications

Delegate Paul H Allen for Idaho Operations Office (NE)

RE: (5)

Similar to my comment above, it is my opinion that the HCA--like GC--need not have every grievance and arbitration reported to them, but rather only those items which can be calculated to cost significant money, impact mission achievement, alter the nature of the contract, etc.

Response:
Accept with Modifications Language has been changed to address these concerns.

Major comment from Jennifer Kelley for Headquarters SC
Regarding paragraphs 4c(5) & 4d(5): This is an expansion of the current DOE Order 350.1 language. Current language required notification of NLRB charges and any other significant labor relations issues. The addition of grievances, arbitrations or legal or judicial proceedings is extremely expansive and overly burdensome. These types of proceedings are most often handled between the employer (M&O contractor/Laboratory) and the union. The M&O contractor uses their discretion when bringing these to the attention of the Contracting Officer. If there are specific issues that may arise during a grievance/arbitration/etc. that GC-63 feels strongly towards receiving notification, We suggest you outline those rather than asking for all. Additionally, we ask that you use the similar caveat language "as appropriate" that is inserted into Chapter II, Responsibilities d. (3).

Response:
Accept with Modifications Language has been changed to address these concerns. Note that the phrase, "as appropriate" in Chapter II, Responsibilities d.(3) does not operate to limit the responsibility, but only to indicate whether NNSA-GC or DOE-GC should be contacted.

Major comment from David Neil for Idaho Operations Office (EM)

Included comments:

Delegate Paul H Allen for Idaho Operations Office (EM)
Similar to my comment above, it is my opinion that the HCA--like GC--need not have every grievance and arbitration reported to them, but rather only those items which can be calculated to cost significant money, impact mission achievement, alter the nature of the contract, etc.

Response:
Accept with Modifications Language has been changed to address these concerns.

Suggested comment from David Neil for Idaho Operations Office (EM)

Included comments:

Delegate Paul H Allen for Idaho Operations Office (EM)
(4) is written awkwardly, suggesting that the CO is obtaining information FROM the HCA in order to stay abreast, when I believe the intent is for the CO to provide information TO the HCA. Should probably read: "Consult regularly with the HCA during the term of collective bargaining agreements to ensure that the HCA is cognizant of information related to contractor labor relations..."

Response:
Accept

Suggested comment from David Neil for Idaho Operations Office (NE)

Included comments:

Delegate Paul H Allen for Idaho Operations Office (NE)

(4) is written awkwardly, suggesting that the CO is obtaining information FROM the HCA in order to stay abreast, when I believe the intent is for the CO to provide information TO the HCA. Should probably read: "Consult regularly with the HCA during the term of collective bargaining agreements to ensure that the HCA is cognizant of information related to contractor labor relations..."

Response:
Accept with Modifications

Delegate Paul H Allen for Idaho Operations Office (NE)

RE: (5)

Similar to my comment above, it is my opinion that the HCA--like GC--need not have every grievance and arbitration reported to them, but rather only those items which can be calculated to cost significant money, impact mission achievement, alter the nature of the contract, etc.

Response:
Accept with Modifications Language has been changed to address these concerns.

Suggested comment from Robert Park for Lawrence Livermore National Laboratory

Included comments:

SME burke27@llnl.gov

d.(5): c.(5): This paragraph requires Contracting Officers to report "any National Labor Relations Board charges, any grievances, any arbitrations, or legal or judicial proceedings, or any other significant labor relations issues as soon as possible after becoming aware of them, and provide any documents relevant to such proceedings." This appears to be broader than current requirements.

Suggest eliminating "grievance" or clarify that this does not include internal grievances spelled out within collective bargaining agreements or personnel policy.

*Clarify what is included under "judicial proceedings". Currently we alert DOE about lawsuits filed and state or federal agency investigations. Suggest this would **not** include unemployment claims, workers' compensation, and wage and hour complaints with local department of labor.*

Response:
Accept with Modifications Language has been changed to address these concerns.

Suggested comment from Walter Cyganowski for Livermore Field Office

Included comments:

SME burke27@llnl.gov

d.(5): c.(5): This paragraph requires Contracting Officers to report "any National Labor Relations Board charges, any grievances, any arbitrations, or legal or judicial proceedings, or any other significant labor relations issues as soon as possible after becoming aware of them, and provide any documents relevant to such proceedings." This appears to be broader than current requirements.

Suggest eliminating "grievance" or clarify that this does not include internal grievances spelled out within collective bargaining agreements or personnel policy.

*Clarify what is included under "judicial proceedings". Currently we alert DOE about lawsuits filed and state or federal agency investigations. Suggest this would **not** include unemployment claims, workers' compensation, and wage and hour complaints with local department of labor.*

Response:
Accept with Modifications Language has been changed to address these concerns.

Major comment from Ken West for NA-Acquisition and Project Management

Chapter I, Section 4. Responsibilities d. (5): This could apply to NNSA if it is revised based on previous comment for Section 4.c.(5).

Response:
Reject All references to NNSA in this section have been removed.

Suggested comment from Ken West for NA-Acquisition and Project Management

Chapter I, Section 4. Responsibilities d. (4) & (6): This requirement could apply to NNSA CO's

Response:
Reject All references to NNSA in this section have been removed.

Major comment from Henry Van Dyke for NA-General Counsel

In Section 4.d.5: Change to say "Notify the Director of the Contractor Human Resources Policy Division/NNSA-CHRD and the Office of the Assistant General Counsel for Pension and Labor Law/NNSA-GC of any grievances, arbitrations, or legal or judicial proceedings, and any other significant labor relations issues as soon as possible after becoming aware of them, and provide any documents relevant to such proceedings." Rationale: it would be better to provide this information directly to the people who may need to do some follow up work on the issue (GC and CHRD) rather than submitting it to the HCA who may not know what to do with it.

Also, 4.d.4 should apply to NNSA, 4.d.5 as modified above should apply to NNSA and 4.d.6 should apply to NNSA.

Response:
Accept with Modifications Language has been changed to address these concerns. All references to NNSA in this section have been removed.

Major comment from Jodi Dawson for Richland Operations Office

Included comments:

SME Cindy.Oliver@rl.doe.gov
Add next text as follows: Consult with GC-63 Site Lead on issues pertaining to Contractor Labor Relations.

Response:
Accept with Modifications Language has been added to address this concern. Designee has been added to CO to clarify that the CO may have others consulting with GC-63 on Labor Relations.

5. REFERENCES.

5. REFERENCES.

a. Federal Acquisition Regulation (FAR), Subpart 22.1, BASIC LABOR POLICIES, which sets forth agency requirements for COs on labor relations matters.

b. Department of Energy Acquisition Regulation (DEAR), Subpart 970.22, APPLICATION

OF LABOR POLICIES, which prescribes DOE labor policies pertaining to the award and administration of management and operating contracts and other contracts as determined by the CO.

c. DEAR 970.3102-05-6, which addresses allowability of compensation costs.

6. CONTACT

6. CONTACT. Site lead attorney from the Office of the Assistant General Counsel for Pension and Labor Law, at (202) 586-7532 or NNSA Office of General Counsel, (202) 586-2647. For a list of site lead contacts in the Office of the Assistant General Counsel for Pension and Labor Law please visit http://energy.gov/gc/leadership/contact-us/contacts-assistant-general-counsel-labor-and-pension-law.

CHAPTER II. LABOR STANDARDS and 1-2. PURPOSE; APPLICABILITY

CHAPTER II.
LABOR STANDARDS

1. PURPOSE.

a. To ensure that applicable labor standards are included in all Department of Energy (DOE) and National Nuclear Security Administration (NNSA) contracts and subcontracts.

b. To ensure DOE/NNSA cooperation with the Department of Labor (DOL), as appropriate, to:

(1) obtain information,

(2) provide complete and timely reports, and

(3) exercise oversight enforcement responsibility to ensure contractor compliance with applicable laws.

2. APPLICABILITY.

This Chapter is applicable to all Departmental elements responsible for the management of contracts and financial assistance agreements that require payment of prevailing wages.

Major comment from Cathy Tullis for Headquarters NA

Included comments:

SME melanie.castle@navy.mil
See NR comment in Chapter I - Paragraph 2.

Response:
Accept Will add "Pursuant to the Applicability provisions set forth at the beginning of this Order,…"

3. REQUIREMENTS.

3. REQUIREMENTS.

a. Labor Standards matters shall be processed as set forth in this Chapter.

b. Proposed acquisition and designated contractor work packages shall be reviewed to determine the applicability of the Davis-Bacon Act (DBA) and/or the Service Contract Act (SCA); work shall be accomplished in accordance with such determinations.

Major comment from Marilyn Jacobs for Headquarters EM

Included comments:

Delegate Paul H Allen for Idaho Operations Office (EM)
This whole section appears to be out of place, and is a repeat of the requirements section under Chapter 1

Response:
Reject This commenter has withdrawn their comment.

Major comment from David Neil for Idaho Operations Office (EM)

Included comments:

Delegate Paul H Allen for Idaho Operations Office (EM)
This whole section appears to be out of place, and is a repeat of the requirements section under Chapter 1

Response:
Reject This commenter has withdrawn their comment.

c. All disputed determinations must be forwarded to the Office of the Assistant General Counsel for Labor and Pension Law or the NNSA Office of General Counsel (NNSA-GC), as appropriate, for review.

d. DOE/NNSA shall furnish enforcement reports to the Administrator, Wage and Hour Division, Department of Labor (DOL) (the Administrator) within 60 days after completion of an investigation where the DBA underpayments by a contractor or any sub-tier subcontractor totals $1,000 or more, or where there is reason to believe the violations are willful or where a contractor does not agree with the findings and refuses to make restitution.

Suggested comment from Cathy Tullis for Headquarters NA

Included comments:

SME Terri.Slack@npo.doe.gov
Typically field counsel is invovled in local disputes; is GC wanting involvement in all disputes?

Response:
Accept with Modifications Language has been added to address this concern. These responsibilities were transferred by the Secretary to GC-63 and the language of the Order does not indicate field counsel is not involved. However, all disputed determinations go through GC-63 before they are submitted to DOL.

Suggested comment from Jennifer Kelley for Headquarters SC

Paragraph 3c. - Recommend that this be rewritten and placed as a responsibility of the HCA/NNSA CHRD with consultation of GC-63/NNSA GC. The requirements section should state requirements of DOE, not what others should submit to GC-63. Suggest corresponding language be inserted in the RESPONSIBILITIES section to clarify who will forward disputed determinations.

Response:
Accept with Modifications Change made to 4(d)(3)

Suggested comment from Sharon O'Bryant for NNSA Production Office

Included comments:

SME Terri.Slack@npo.doe.gov
Typically field counsel is invovled in local disputes; is GC wanting involvement in all disputes?

Response:
Accept with Modifications Language has been added to address this concern. These responsibilities were transferred by the Secretary to GC-63 and the language of the Order does not indicate field counsel is not involved. However, all disputed determinations go through GC-63 before they are submitted to DOL.

e. DOE/NNSA must prepare and submit the DBA Semi-Annual Enforcement Report to the Administrator of Wage and Hour, DOL, by April 30 and October 31 of each calendar year.

f. DOE/NNSA must ensure bidders and contractors are provided with applicable labor standards information and that, where necessary, conferences and contract orientation meetings are held for solicitations or contracts (see the References section below for a listing of relevant Labor Standards regulations).

g. For SCA-covered contracts in excess of $25,000, SF-279, Federal Procurement Data System Individual Contract Action Report, or its equivalent, must be submitted to the Federal

Procurement Data System (FPDS).

Major comment from Cathy Tullis for Headquarters NA

Included comments:

Henry Van Dyke for NA-General Counsel
Add "h. For NNSA, the requirements of this Chapter shall apply to the extent the requirements are consistent with NNSA Business Operating Procedure, BOP-003.0601R1, Contractor Human Resources (CHR) Policy and Approval of Actions Process, Attachment 1, the Approval of Contractor Resources Action Table, Labor Standards Section."

Response:
Accept

Ken West for NA-Acquisition and Project Management

Chapter II, 3 Requirements : Add (h): For NNSA For NNSA, the requirements of this Chapter shall apply to the extent the requirements are consistent with NNSA Business Operating Procedure, BOP-003.0601R1, Contractor Human Resources (CHR) Policy and Approval of Actions Process, Attachment 1, the Approval of Contractor Resources Action Table, Labor Standards Section.

Response:
Accept

SME JoAnn.Wright@nnsa.doe.gov
The M&Os play a key role in the DBA Semi-Annual Enforcement Report yet there doesn't appear to be a requirement for submittal of data.

Response:
Reject

Suggested comment from Jennifer Kelley for Headquarters SC
Paragraph 3g. Where does this requirement stem from? When speaking with procurement, all Federal contracts, regardless of dollar threshold have to be submitted to FPDS. Therefore, why is a SCA-covered contract called out specifically? Why is there a dollar threshold? Suggest citing reference.

Response:
Accept with Modifications

Major comment from Ken West for NA-Acquisition and Project Management

Chapter II, 3 Requirements : Add (h): For NNSA For NNSA, the requirements of this Chapter shall apply to the extent the requirements are consistent with NNSA Business Operating Procedure, BOP-003.0601R1, Contractor Human Resources (CHR) Policy and Approval of Actions Process, Attachment 1, the Approval of Contractor Resources Action Table, Labor Standards Section.

Response:
Accept

Major comment from Henry Van Dyke for NA-General Counsel
Add "h. For NNSA, the requirements of this Chapter shall apply to the extent the requirements are consistent with NNSA Business Operating Procedure, BOP-003.0601R1, Contractor Human Resources (CHR) Policy and Approval of Actions Process, Attachment 1, the Approval of Contractor Resources Action Table, Labor Standards Section."

Response:
Accept

Major comment from Jennifer Bitsie for Sandia Field Office

Included comments:

SME JoAnn.Wright@nnsa.doe.gov
The M&Os play a key role in the DBA Semi-Annual Enforcement Report yet there doesn't appear to be a requirement for submittal of data.

Response:
Reject

4. RESPONSIBILITIES.

4. RESPONSIBILITIES.

a. Office of the Assistant General Counsel for Labor and Pension Law.

(1) In consultation with NNSA-GC, serve as the labor advisors for DOE/NNSA for the purpose of acting as the primary point of contact with DOL.

(2) For DOE and NNSA, in consultation with NNSA-GC, coordinate comments on proposed revisions to DOL regulations and provide interpretations of final revisions to Departmental elements (both at Headquarters (HQ) and in the field).

(3) For DOE and NNSA, in consultation with NNSA-GC, furnish an enforcement report to the Administrator, Wage and Hour Division, DOL (the Administrator) within 60 days after completion of an investigation where the DBA underpayments by a contractor or any sub-tier subcontractor totals $1,000 or more, or where there is reason to believe the violations are willful or where the contractor does not agree with the findings and refuses to make restitution.

(4) For DOE and NNSA, in consultation with NNSA-GC, submit a factual summary report detailing any violations including any data on the amount of restitution paid, the number of workers who received restitution, liquidated damages assessed under the Contract Work Hours and Safety Standards Act, and any other information necessary for an appropriate review when the DOL has requested an investigation.

(5) For DOE and NNSA, prepare and submit the DBA Semi-Annual Enforcement Report to the DOL by April 30 and October 31.

b. Office of the Assistant General Counsel for Labor and Pension Law for DOE and the

NNSA Office of General Counsel (NNSA-GC) for NNSA.

(1) Work with the Heads of Contracting Activities (HCA) and Contracting Officers (COs) to determine classes of work for which applicability/non-applicability of the DBA is clear, and for which the HCA/CO will require no further DOE determination on coverage in advance of the work.

(2) Coordinate responses to Congress and DOL on labor standards complaints or other labor standards inquiries.

(3) Review contested labor standards determinations before the determinations become final.

(4) Determine applicability of the DBA, the SCA, and other labor standards statutes and provide analysis and comments in procurements that require payment of prevailing wages.

Major comment from Marilyn Jacobs for Headquarters EM

Included comments:

SME Cindy.Oliver@rl.doe.gov
Change text for (4) to read: Determine applicability of the DBA, the SCA, and other labor standards statutes and provide analysis and comments ~~**in**~~ **for HQ** procurements **or when requested for contracts** that require payment of prevailing wages.

Response:
Accept with Modifications Language has been modified to address this concern.

Suggested comment from Jennifer Kelley for Headquarters SC
Paragraph 4b(4) could you please clarify which procurements GC-63 with have involvement to determine the applicability of the DBA and SCA and other labor standards statutes? For M&O contracts and subcontracts, the Site Office Contracting Officer has that responsibility.

Response:
Accept with Modifications Language has been modified to address this concern.

Major comment from Jodi Dawson for Richland Operations Office

Included comments:

SME Cindy.Oliver@rl.doe.gov
Change text for (4) to read: Determine applicability of the DBA, the SCA, and other labor standards statutes and provide analysis and comments ~~**in**~~ **for HQ** procurements **or when requested for contracts** that require payment of prevailing wages.

Response:
Accept with Modifications Language has been modified to address this concern.

c. Heads of Contracting Activities (HCA).

(1) Establish Labor Standards Committees to advise COs on the applicability of the various labor standards statutes to work performed under the contracts.

(2) Determine whether to delegate to COs the HCA authority under DEAR 970.2204-1-1(b)(3), to prescribe classes of work for which applicability/non-applicability of the DBA is clear.

(3) Approve "non-covered" determinations made by COs, per DEAR 970.2204-1-1(a)(2).

(4) Consult regularly with COs during the contract life cycle (from procurement to close-out) to stay abreast of issues related to labor standards.

Suggested comment from Marilyn Jacobs for Headquarters EM

Included comments:

Delegate Paul H Allen for Idaho Operations Office (EM)
I would delete the comma in the sentence at (3), as the DEAR reference applies only to a certain class of "non-covered" determinations, not all "non-covered" determinations. The comma seems to imply that all "non-covered" determinations must be approved by the CO (contrary to the DEAR citation).

Response:
Accept

Suggested comment from Cathy Tullis for Headquarters NA

Included comments:

Ken West for NA-Acquisition and Project Management
Chapter II, 4 Responsibilities c. (1): Add "where appropriate" after "Establish Labor Standards Committees"

Response:
Accept

Henry Van Dyke for NA-General Counsel
4.c.1: Add "where appropriate" so that it reads "Establish Labor Standards Committees, where appropriate, to advise COs on the applicability of the various labor standards statutes to work performed under the contracts." Rationale: At several sites, in particular laboratories where there is little DBA construction work performed, there is one person, not an entire committee, that advises the CO as to the applicability of various labor standards statutes to the work performed.

Response:
Accept

Suggested comment from PK Niyogi for Headquarters NE

Included comments:

Delegate Paul H Allen for Idaho Operations Office (NE)
I would delete the comma in the sentence at (3), as the DEAR reference applies only to a certain class of "non-covered" determinations, not all "non-covered" determinations. The comma seems to imply that all "non-covered" determinations must be approved by the CO (contrary to the DEAR citation).

Response:
Accept

Suggested comment from David Neil for Idaho Operations Office (EM)

Included comments:

Delegate Paul H Allen for Idaho Operations Office (EM)
I would delete the comma in the sentence at (3), as the DEAR reference applies only to a certain class of "non-covered" determinations, not all "non-covered" determinations. The comma seems to imply that all "non-covered" determinations must be approved by the CO (contrary to the DEAR citation).

Response:
Accept

Suggested comment from David Neil for Idaho Operations Office (NE)

Included comments:

Delegate Paul H Allen for Idaho Operations Office (NE)
I would delete the comma in the sentence at (3), as the DEAR reference applies only to a certain class of "non-covered" determinations, not all "non-covered" determinations. The comma seems to imply that all "non-covered" determinations must be approved by the CO (contrary to the DEAR citation).

Response:
Accept

Suggested comment from Ken West for NA-Acquisition and Project Management
Chapter II, 4 Responsibilities c. (1): Add "where appropriate" after "Establish Labor Standards Committees"

Response:
Accept

Suggested comment from Henry Van Dyke for NA-General Counsel
4.c.1: Add "where appropriate" so that it reads "Establish Labor Standards Committees, where appropriate, to advise COs on the applicability of the various labor standards statutes to work performed under the contracts." Rationale: At several sites, in particular laboratories where there is little DBA construction work performed, there is one person, not an entire committee, that advises the CO as to the applicability of various labor standards statutes to the work performed.

Response:
Accept

d. Contracting Officers (COs).

(1) Consult regularly with the HCA during the contract life cycle (from procurement to close-out) to keep the HCA informed of issues related to labor standards.

(2) Review the e98, Notice of Intention to Make a Service Contract and Response Notice, to ensure that the contemplated work is appropriately covered by the SCA and that forms are prepared properly. Forwards such forms

to DOL.

(3) Notify the Office of the Assistant General Counsel for Pension and Labor Law or NNSA-GC, as appropriate, of complaints by contractor employees, significant labor standards violations (i.e., all violations of $1,000 or more), DOL investigations, and all labor standards complaints, arbitrations, or legal or judicial proceedings generated by contractor employees and others, and any other significant labor standards issues as soon as possible after becoming aware of them.

Suggested comment from Jennifer Kelley for Headquarters SC

Paragraph 4d(2). More explanation is needed on the e98. When does this happen?

Response:
Accept Language has been added to address this concern.

Paragraph 4d(3). Suggest go to HCA instead of or in addition to General Counsel.

Response:
Reject These responsibilities were transferred by the Secretary to GC-63. GC-63 is the single point of contact with DOL pursuant to the transfer of functions from LM to GC.

Paragraph 4d (3), similar comment as we posted for Chapter I, Responsibilities c. (5), this expands the current requirement in DOE Order 350.1. Current requirement outlines advising WT of complaints and significant labor standards violations generated by contractor employees and others. This new Order expands such notification to complaints, arbitrations, etc. However, we provide this comment as a suggestion and not a major comment since this section has the insertion "as appropriate," whereas in the similar requirement in Chapter I, Responsibilities c. (5), there is no such language. Additionally, it is customary for the Contracting Officer to communicate to their Head of Departmental Element or HCA rather than provide direct notification to GC-63.

Response:
Accept with Modifications Language has been changed to modify the type of "grievances" to be reported to GC-63 to address these concerns. Also, please not that "As appropriate" indicates whether to contact NNSA-GC or DOE-GC and does not operate as a limiting phrase.

Paragraph 4d(2), could you clarify when an e-98 is necessary. An extenuating circumstance would exist to fill out and send to DOL an e-98. Rather, the more common practice is to review SF (or electronic) 98 or equivalent paperwork" and pull down the appropriate Wage Determination from http://www.wdol.gov/. Shouldn't the more common practice also be listed as a CO responsibility?

Response:
Accept Language has been added to address this concern.

(4) Ensure that all contracts contain the appropriate labor standards provisions.

(5) Ensure that bidders and contractors are provided with applicable labor standards information and that, where

necessary, conferences and contract orientation meetings are held for solicitations or contracts.

(6) Assist the DOL, in coordination with the Office of the Assistant General Counsel for Pension and Labor Law or NNSA-GC, as appropriate, in preparing for a hearing on and/or investigating any alleged violations or disputes on alleged violations.

(7) For SCA-covered contracts in excess of $25,000, furnish SF-279, Federal Procurement Data System Individual Contract Action Report, or its equivalent, to the Federal Procurement Data System (FPDS).

(8) Request DBA project wage determinations from the DOL on the SF-308, Request for Determination and Response to Request for instances in which general area decisions are not available or are not appropriate to the DOE site or job.

(9) Ensure payroll and job-site audits are conducted as may be necessary to determine compliance with the DBA.

Suggested comment from Jennifer Kelley for Headquarters SC

Paragraph 4d(7) - This could be placed elsewhere. The chapters of the DOE O 350.3 would be placed in DOE M&O contracts; therefore, the SCA would not apply. We recommend this be a contract clause in applicable SCA contracts and not placed in this Order.

Response:
Accept Language modified.

Paragraph 4d(7) - As of the drafting of this Order, Program Elements (as noted) are M&O contractors and program office. SCA would not be applicable to M&O contractors; only primes (who this Order would apply to) should see this requirement and take note. Recommend this requirement be placed in prime contracts (non M&O).

Response:
Accept with Modifications The language has been modified for clarity. Note this Order is not a contract, as such this Order does not impose any obligations upon M&O contractors.

Paragraph 4d(8) Suggest identifying web-based or electronic options available for submitting the SF-308.

Response:
Accept

(10) Investigate complaints under the DBA to determine compliance and proceed as follows:

(a) If no violation is discovered, advise the complainant of the reasons for the conclusion.

(a) If a violation is discovered:

1 determine the amount of back wages, fringe benefits, and overtime pay due each employee, and request the contractor to make restitution;

2 determine the amount of liquidated damages due, if any, and request the contractor to make restitution;

3 withhold sufficient funds to compensate employees and to cover any liquidated damages that may be due when the contractor does not cooperate or does not agree with the findings and refuses to make restitution;

4 notify the Office of the Assistant General Counsel for Pension and Labor Law of DBA non-compliance findings; and

5 ensure that funds withheld to compensate employees for back wages are forwarded to the Department of Labor for disbursement, if restitution has not been made.

Major comment from Marilyn Jacobs for Headquarters EM

Included comments:

SME Cindy.Oliver@rl.doe.gov

Change the 2nd (a) under (10) to (b).

Response:
Accept

Major comment from Cathy Tullis for Headquarters NA

Included comments:

Henry Van Dyke for NA-General Counsel

4.d.10.b.4: add "and NNSA GC, as appropriate" so that it reads: "notify the Office of the Assistant General Counsel for Pension and Labor Law and NNSA GC, as appropriate, of DBA non-compliance findings; and"

Response:
Accept

Ken West for NA-Acquisition and Project Management
Chapter II, 4 Responsibilities d.(10)(b)4: Add "and NNSA GC, as appropriate" so that it reads: "notify the Office of the Assistant General Counsel for Pension and Labor Law and NNSA GC, as appropriate, of DBA non-compliance findings; and"

Response:
Accept

Major comment from Ken West for NA-Acquisition and Project Management
Chapter II, 4 Responsibilities d.(10)(b)4: Add "and NNSA GC, as appropriate" so that it reads: "notify the Office of the Assistant General Counsel for Pension and Labor Law and NNSA GC, as appropriate, of DBA non-compliance

findings; and"

Response:
Accept

Major comment from Henry Van Dyke for NA-General Counsel

4.d.10.b.4: add "and NNSA GC, as appropriate" so that it reads: "notify the Office of the Assistant General Counsel for Pension and Labor Law and NNSA GC, as appropriate, of DBA non-compliance findings; and"

Response:
Accept

Major comment from Jodi Dawson for Richland Operations Office

Included comments:

SME Cindy.Oliver@rl.doe.gov

Change the 2nd (a) under (10) to (b).

Response:
Accept

(11) Prepare and submit the DBA Semi-Annual Enforcement Report to the Office of the Assistant General Counsel for Pension and Labor Law by April 21 and October 21 of each year.

Suggested comment from Jennifer Kelley for Headquarters SC

Paragraph 4d(11) - Should read "ensure contractor compliance to prepare and submit DBA Semi-Enforcement Report."

Response:
Reject The contractor does not submit its DBA Enforcement Reports directly to HQ through DBAEnforcement@hq.doe.gov. The contractor submits to the CO/Designee as directed or through contract clause. The CO/Designee will review and either roll up reports from all contractors into one submission or submit each contractor's report separately.

NEW Paragraph 4d(12). Add new 4d(12) - Submit DBA Semi-Annual Enforcement Report to GC-63 (via DBAEnforcement@hq.doe.gov) by April 21 and October 21 of each year.

Response:
Reject This change is unnecessary as 4d(11) already encompasses this requirement.

5. REFERENCES.

5. REFERENCES.

a. Department of Labor Regulations at 29 C.F.R. Parts 1, 3, 4 and 5, which provide labor standards for federal service contracts, and labor standards provisions applicable to contracts covering federally financed and assisted construction.

b. Federal Acquisition Regulations (FAR), Subpart 5.4, RELEASE OF INFORMATION.

c. FAR, Subpart 22.4, LABOR STANDARDS FOR CONTRACTS INVOLVING CONSTRUCTION, which explains the applicability of the DBA.

d. FAR, Subpart 22.10, SERVICE CONTRACT ACT OF 1965, AS AMENDED, which explains the applicability of the Service Contract Act.

e. Department of Energy Acquisition Regulation (DEAR) 970.2204-1-1, ADMINISTRATIVE CONTROLS AND CRITERIA FOR APPLICATION OF THE DAVIS-BACON ACT IN OPERATIONAL OR MAINTENANCE ACTIVITIES.

f. DEAR Subpart 970.52, SOLICITATION PROVISIONS AND CONTRACT CLAUSES FOR MANAGEMENT AND OPERATING CONTRACTS.

g. DOE Acquisition Guide, Chapter 22.1, Labor Standards for Construction and Services.

Major comment from Steve Duarte for Headquarters GC

Included comments:

SME Gena.Cadieux@hq.doe.gov

The reference should be to Federal Acquisition Regulation, not Regulations.

Response:
Accept

6. CONTACT

6. CONTACT. Site lead attorney from the Office of the Assistant General Counsel for Labor and Pension Law, at (202) 586-7532 or the NNSA Office of General Counsel at (202) 586-2647. For a list of site lead contacts in the Office of the Assistant General Counsel for Pension and Labor Law please visit http://energy.gov/gc/leadership/contact-us/contacts-assistant-general-

CHAPTER III.
REDUCTIONS IN CONTRACTOR EMPLOYMENT

1. PURPOSE.

a. To ensure contractors perform workforce planning that guarantees continued availability of critical knowledge, skills, and abilities required for the Department's mission.

b. To ensure that contractor workforce restructuring actions are conducted in a manner that minimizes the impact on programmatic activities.

c. To ensure contractors provide reasonable notice to employees, their representatives, public officials, and other stakeholders of necessary reductions in contractor employment, and to consult with them in planning for work force restructuring.

d. To the extent practicable, to minimize involuntary separations at DOE defense nuclear facilities and other facilities through retraining, attrition, and other measures, as practicable.

Suggested comment from Cathy Tullis for Headquarters NA

Included comments:

SME burke27@llnl.gov

- 1) a. requirement that contractors perform workforce planning that **guarantees continued availability** of critical knowledge, skills, and abilities required for the Department's mission.

Use of "guarantee" requirement is unreasonable, as Contractor cannot control retirements, and other natural voluntary turnover that may impact availability of critical KSA's. Suggest replacing "guarantee" with "maintains" or "provides".

Response:
Accept changed to "provides for"

Suggested comment from Robert Park for Lawrence Livermore National Laboratory

Included comments:

SME burke27@llnl.gov

- 1) a. requirement that contractors perform workforce planning that **guarantees continued availability** of critical knowledge, skills, and abilities required for the Department's mission.

Use of "guarantee" requirement is unreasonable, as Contractor cannot control retirements, and other natural voluntary turnover that may impact availability of critical KSA's. Suggest replacing "guarantee" with "maintains" or "provides".

Response:
Accept changed to "provides for"

Suggested comment from Walter Cyganowski for Livermore Field Office

Included comments:

SME burke27@llnl.gov

- 1) a. requirement that contractors perform workforce planning that **guarantees continued availability** of critical knowledge, skills, and abilities required for the Department's mission.

Use of "guarantee" requirement is unreasonable, as Contractor cannot control retirements, and other natural voluntary turnover that may impact availability of critical KSA's. Suggest replacing "guarantee" with "maintains" or "provides".

Response:
Accept changed to "provides for"

2. APPLICABILITY. This chapter is applicable to all Departmental elements responsible for the management of cost reimbursable contracts that include provisions for DOE reimbursement of contractor human resource costs.

Major comment from Cathy Tullis for Headquarters NA

Included comments:

SME melanie.castle@navy.mil
See NR comment on Chapter I - Paragraph 2.

Response:
Accept Will add "Pursuant to the Applicability provisions set forth at the beginning of this Order,…"

3. REQUIREMENTS.

3. REQUIREMENTS.

a. Workforce restructuring actions will be managed in accordance with this chapter and Departmental policies, as revised from time to time. Accountability will be with the Under Secretaries unless otherwise delegated. Collaboration is expected with the DOE and NNSA Offices of General Counsel, Management, Congressional and Intergovernmental Affairs, and

Public Affairs. It remains critical to ensure complete legal reviews of all workforce restructuring actions which meet the criteria specified in section 4.f.(2) of this Chapter.

Major comment from Kathleen Ellis for Argonne National Laboratory

Included comments:

SME draker@anl.gov
There does not appear to be a Section 4.f.(2) herein.

Major comment from John Kasprowicz for Argonne Site Office

Included comments:

SME draker@anl.gov
There does not appear to be a Section 4.f.(2) herein.

Major comment from Marilyn Jacobs for Headquarters EM

Included comments:

SME Cindy.Oliver@rl.doe.gov
Change last sentence of this paragraph to remove the reference to 4.f(2) as none could be found: It remains critical to ensure complete legal reviews of all workforce restructuring actions ~~**which meet the criteria**~~ specified in ~~**section 4.f.(2) of**~~ this Chapter.

Response:
Accept

Suggested comment from Cathy Tullis for Headquarters NA

Included comments:

Ken West for NA-Acquisition and Project Management

Chapter III, 3. Requirements a.: There is no 4.f.(2) in this chapter. Reference needs to be corrected.

Response:
Accept

Suggested comment from Jennifer Kelley for Headquarters SC
Paragraph 3a. There isn't paragraph 4f(2). This needs to be corrected.

Response:
Accept

Paragraph 3a. It appears that this Order now requires legal reviews of all involuntary actions over 50 and 100 or more voluntary separations instead of just consultation. Under the Secretary of Energy's policy letter dated May 5, 2011, the

only role for GC-63 was review of diversity analysis should the contractor decide that it did not want to risk unallowable cost in the case of a lawsuit. What would be legally reviewed (i.e., contractor's plan)? Should this be the responsibility of the HCA?

Response:
Reject The responsibility for serving as the DOE focal point for contractor workforce restructuring policy has been transferred from LM to GC. DOE-GC reviews not just the diversity analysis, but also the General Plan and Specific Plan.

Suggested comment from Ken West for NA-Acquisition and Project Management

Chapter III, 3. Requirements a.: There is no 4.f.(2) in this chapter. Reference needs to be corrected.

Response:
Accept

Major comment from Jodi Dawson for Richland Operations Office

Included comments:

SME Cindy.Oliver@rl.doe.gov
Change last sentence of this paragraph to remove the reference to 4.f(2) as none could be found: It remains critical to ensure complete legal reviews of all workforce restructuring actions ~~**which meet the criteria**~~ specified in ~~**section 4.f.(2) of**~~ this Chapter.

Response:
Accept

Major comment from Joe Scarcello for Thomas Jefferson National Accelerator Facility

Included comments:

SME rbarbosa@jlab.org
There is no section 4.f.(2) referenced. This needs to be clarified so that appropriate review and comment (as appropriate) can be included.

Major comment from Scott Mallette for Thomas Jefferson Site Office

Included comments:

SME rbarbosa@jlab.org
There is no section 4.f.(2) referenced. This needs to be clarified so that appropriate review and comment (as appropriate) can be included.

Suggested comment from Scott Mallette for Thomas Jefferson Site Office

Included comments:

SME dbrittin@jlab.org

Last sentence references section 4.f.(2); there is no section 4.f.2 in this Chapter.

b. DOE will develop performance measures to assess contractor success in developing strategies for contractor management to use recruitment, retention, and best practices to ensure continued availability of the critical workforce knowledge, skills, and abilities required for the Department's missions.

c. DOE/NNSA will not approve contractor requests for enhanced benefits, i.e., benefits in excess of those provided for under the parties' contract, including benefits in excess of those provided for under any benefit plans approved by the Department.

d. DOE/NNSA will not approve contractor requests for reimbursement of early retirement incentives that are funded through contractor pension plans.

Major comment from Marilyn Jacobs for Headquarters EM

Included comments:

SME Cindy.Oliver@rl.doe.gov

Comment for b. It is not clear as to what is meant by b. "develop performance measures" and/or how DOE would evaluate and will this be a contractual requirement for a program to be in place so DOE can assess as 350.3 does not include a CRD?

Comments for c. Add the following words at the end of the sentence "unless approved by the appropriate Under Secretary".

Response:
Accept with Modifications The language has been changed for clarity.

Major comment from Cathy Tullis for Headquarters NA

Included comments:

Ken West for NA-Acquisition and Project Management
Chapter III, 3. Requirements b.: It should be DOE/NNSA.

Response:
Accept

Ken West for NA-Acquisition and Project Management
Chapter III, 3. Requirements : Add (e): For NNSA, the requirements of this Chapter shall apply to the extent the requirements are consistent with NNSA Business Operating Procedure, BOP-003.0601R1, Contractor Human Resources (CHR) Policy and Approval of Actions Process, Attachment 1, the Approval of Contractor Resources Action Table, Reductions in Contractor Employment.

Response:
Accept subsection 3.f. has been added.

Ken West for NA-Acquisition and Project Management
Chapter III, 3. Requirements b. : What type of performance measures? Are any measures currently used? Will DOE GC be lead in developing the measures? Recommend deletion.

Response:
Accept with Modifications The language has been changed for clarity.

Henry Van Dyke for NA-General Counsel
Add a section e.: "For NNSA, the requirements of this Chapter shall apply to the extent the requirements are consistent with NNSA Business Operating Procedure, BOP-003.0601R1, Contractor Human Resources (CHR) Policy and Approval of Actions Process, Attachment 1, the Approval of Contractor Resources Action Table, Reductions in Contractor Employment Section."

Response:
Accept The addition of subsection 3.f. resolves this concern.

SME darby.dieterich@nnsa.doe.gov

The requirement in sub-paragraph 3.b. to "develop performance measures to assess contractor success in developing strategies...." is contrary to NNSA's current Strategic PEP process. This requirement would be applicable to DOE only.

Response:
Accept with Modifications The language has been changed for clarity.

Suggested comment from Cathy Tullis for Headquarters NA

Included comments:

Henry Van Dyke for NA-General Counsel

Regarding 3.b. ,it should be "DOE/NNSA".

Are we measuring how well they have "developed strategies" or how well they "recruit & retain in order to keep the critical skills? Recommend clarifying exactly what we are seeking to assess.

Response:
Accept with Modifications The language has been changed for clarity.

Suggested comment from Jennifer Kelley for Headquarters SC
Paragraph 3b. Requirement for specific development of performance measures to assess contractor success in strategies for contractor management to use recruitment, retention, and best practices to ensure continued availability of the critical workforce, etc... is unclear, and potentially redundant to existing contract performance management process. Will development of specific performance measures be assigned to a particular DOE/NNSA Office and consistently applied to contractors?

Response:
Accept with Modifications The language has been changed for clarity.

Paragraph 3c and 3d - This clause now expressly denies approval of contractor's request enhanced benefits and early retirement incentives. This changes the Secretary of Energy's May 5, 2011, guidance stating "Also, Congress has

prohibited DOEINNSA from reimbursing contractors for enhanced benefits, i.e., benefits in excess of those provided for under the parties' contract, including those under any benefit plans approved by the Department unless the Department submits a reprogramming request to the relevant Congressional committees. Early retirement incentives that are funded through contractor pension plans will continue to be unallowable in order to avoid increasing the Department's long term pension liabilities."

Please clarify whether this means DOE will not consider reprogramming requests?

Response:
Accept with Modifications The language has been modified for clarity. Note that the requirement for reprogramming has been legislatively removed. Further, the Chu guidance did not change the existing policy requirement of the need for S1 or S2 approval for use of enhanced benefits, including early retirement incentives funded through the pension trust fund.

Major comment from Ken West for NA-Acquisition and Project Management
Chapter III, 3. Requirements : Add (e): For NNSA, the requirements of this Chapter shall apply to the extent the requirements are consistent with NNSA Business Operating Procedure, BOP-003.0601R1, Contractor Human Resources (CHR) Policy and Approval of Actions Process, Attachment 1, the Approval of Contractor Resources Action Table, Reductions in Contractor Employment.

Response:
Accept subsection 3.f. has been added.

Chapter III, 3. Requirements b.: It should be DOE/NNSA.

Response:
Accept

Chapter III, 3. Requirements b. : What type of performance measures? Are any measures currently used? Will DOE GC be lead in developing the measures? Recommend deletion.

Response:
Accept with Modifications The language has been changed for clarity.

Major comment from Henry Van Dyke for NA-General Counsel
Add a section e.: "For NNSA, the requirements of this Chapter shall apply to the extent the requirements are consistent with NNSA Business Operating Procedure, BOP-003.0601R1, Contractor Human Resources (CHR) Policy and Approval of Actions Process, Attachment 1, the Approval of Contractor Resources Action Table, Reductions in Contractor Employment Section."

Response:
Accept The addition of subsection 3.f. resolves this concern.

Suggested comment from Henry Van Dyke for NA-General Counsel

Regarding 3.b. ,it should be "DOE/NNSA".

Are we measuring how well they have "developed strategies" or how well they "recruit & retain in order to keep the critical skills? Recommend clarifying exactly what we are seeking to assess.

Response:

Accept with Modifications The language has been changed for clarity.

Major comment from Mike Collins for Nevada Field Office

Included comments:

SME darby.dieterich@nnsa.doe.gov

The requirement in sub-paragraph 3.b. to "develop performance measures to assess contractor success in developing strategies...." is contrary to NNSA's current Strategic PEP process. This requirement would be applicable to DOE only.

Response:
Accept with Modifications The language has been changed for clarity.

Major comment from Jodi Dawson for Richland Operations Office

Included comments:

SME Cindy.Oliver@rl.doe.gov

Comment for b. It is not clear as to what is meant by b. "develop performance measures" and/or how DOE would evaluate and will this be a contractual requirement for a program to be in place so DOE can assess as 350.3 does not include a CRD?

Comments for c. Add the following words at the end of the sentence "unless approved by the appropriate Under Secretary".

Response:
Accept with Modifications The language has been changed for clarity.

4. REQUIREMENTS APPLICABLE ONLY TO DOE/NNSA DEFENSE NUCLEAR FACILITIES

4. REQUIREMENTS APPLICABLE ONLY TO DOE/NNSA DEFENSE NUCLEAR FACILITIES.

a. Upon a determination that a change in the work force at a DOE defense nuclear facility is necessary, the Department is obligated under section 3161 of the National Defense Authorization Act for Fiscal Year 1993, Public Law 102-484 (Section 3161), codified at 42 U.S.C. 2704, to prepare a workforce restructuring plan (herein referred to as the General Plan) for submission to Congress. A list of Defense Nuclear Facilities can be found online at http://energy.gov/gc/services/technology-transfer-and-procurement/office-assistant-general-counsel-labor-and-pension.

b. The General Plan shall be submitted to the Secretary, who will approve or disapprove it for delivery to Congress.

c. The General Plan shall lay out how contractor workforce restructuring will be conducted

at the site in a manner that meets the objectives of this Chapter. The Department has developed a template for General Plans to ensure consistency and accurate application of Section 3161 and Departmental policy, as well as to expedite Departmental review. The template for the General Plan and the accompanying notice of intent to develop a plan for workforce restructuring can be found online at http://energy.gov/gc/services/technology-transfer-and-procurement/office-assistant-general-counsel-labor-and-pension.

d. In order to ensure appropriate consultation with affected stakeholders in the development of a General Plan, Section 3161 provides that changes in the work force at a Department of Energy defense nuclear facility should be made only after notice of the anticipated change is provided to the Department, affected employees, and the local communities. Section 3161 requires such notice to be provided at least 120 days before the anticipated change to permit the development of a General Plan by the Department, where no General Plan is in place.

e. The Department has interpreted Section 3161 to trigger the requirement to develop a General Plan only where the change anticipated will affect at least 100 employees within a 12-month period.

f. General Plans developed in accordance with Section 3161 provide a framework for workforce restructuring actions at a particular DOE or NNSA site; these plans are not limited to a specific workforce restructuring action. Departmental policy on matters such as use of incentives and employee waivers has changed over time, and, accordingly, it is crucial to periodically review and update the General Plans for each site. The Department has developed a template for a Notice to advise stakeholders that a new draft General Plan for the site is, or will become, available for comment. The notice can be found online at http://energy.gov/gc/services/technology-transfer-and-procurement/office-assistant-general-counsel-labor-and-pension.

g. Certain employees involuntarily terminated during an approved workforce restructuring at a defense nuclear facility should receive preference in filling vacancies in the work force of the DOE/NNSA contractors and subcontractors. The Department has determined that employees must be identified as having helped maintain the Nation's nuclear deterrent in order to qualify for this preference. Preference eligible employees are those employees who were employed at a defense nuclear facility on or before September 27, 1991, and have worked at a DOE defense nuclear facility since that date. Complete eligibility criteria for the preference can be found online at http://energy.gov/gc/services/technology-transfer-and-procurement/office-assistant-general-counsel-labor-and-pension. All prime contractors and subcontractors whose contracts with the Department equal or exceed $500,000 in value are required by Section 3161 to honor the preference.

5. REQUIREMENTS APPLICABLE TO BOTH DOE/NNSA DEFENSE NUCLEAR FACILITIES AND NON-DEFENSE FACILITIES

5. REQUIREMENTS APPLICABLE TO BOTH DOE/NNSA DEFENSE NUCLEAR FACILITIES AND NON-DEFENSE FACILITIES

a. The appropriate Under Secretary is charged with responsibility for approving workforce restructuring actions by its contractors as set forth herein. This approval authority may be delegated as determined by the Under Secretary. All such delegations must be made in writing. If, by the terms of the contractor's contract, it must obtain contracting officer approval to expend funds associated with a workforce restructuring action, this requirement shall in no way be construed to abrogate the contracting officer's authority.

Suggested comment from Cathy Tullis for Headquarters NA

Included comments:

Henry Van Dyke for NA-General Counsel
contracting officer's --- should be capitalized.

Response:
Accept

Suggested comment from Jennifer Kelley for Headquarters SC
Paragraph 5a. Suggest reference to the policy that requires a contractor to prepare a specific workforce restructuring plan.

Response:
Reject See References section.

Suggested comment from Henry Van Dyke for NA-General Counsel
contracting officer's --- should be capitalized.

Response:
Accept

b. Each contractor is obligated by DOE contractor workforce restructuring policy to prepare a specific workforce restructuring plan (hereinafter referred to as the Specific Plan) if either of the following conditions are met within a rolling 12-month period:

(1) The contractor intends to reduce its work force by 50 or more employees through involuntary separation; or

(2) The contractor intends to reduce its work force by 100 or more employees through a combination of voluntary and involuntary separation actions.

Major comment from Marilyn Jacobs for Headquarters EM

Included comments:

Delegate Paul H Allen for Idaho Operations Office (EM)
For the record, the relevant section of the Secretary's Guidance on Workforce Restructuring (from which these requirements are derived) is not clear that conditions for preparing a specific restructuring plan apply to a "rolling 12-month period". In fact, the relevant section is silent on that, suggesting the intent is similar to the previous

section that indicates that a plan is necessary when the number of separations is reached "within a 12-month period" (1st Paragraph, Page 2 of Secretary Chu's memo dated May 5, 2011). The only reference to a rolling 12-month period is specifically noted when it comes to the requirement for preparing an adverse impact analysis (second to last paragraph, page 3). I would recommend keeping the language in this section consistent with the language in the Chu Guidance memo. Otherwise, this could be construed as a change to the Secretary's guidance, and there will need to be a clarification of the Secretary's memo to the field on this if the intent was to be a rolling 12-month period.

Response:
Reject The word "rolling" is consistent with Secretarial policy and has been appropriately included in this Order for the purpose of clarifying the application of Secretary Chu's guidance in specific circumstances.

Major comment from PK Niyogi for Headquarters NE

Included comments:

Delegate Paul H Allen for Idaho Operations Office (NE)
For the record, the relevant section of the Secretary's Guidance on Workforce Restructuring (from which these requirements are derived) is not clear that conditions for preparing a specific restructuring plan apply to a "rolling 12-month period". In fact, the relevant section is silent on that, suggesting the intent is similar to the previous section that indicates that a plan is necessary when the number of separations is reached "within a 12-month period" (1st Paragraph, Page 2 of Secretary Chu's memo dated May 5, 2011). The only reference to a rolling 12-month period is specifically noted when it comes to the requirement for preparing an adverse impact analysis (second to last paragraph, page 3). I would recommend keeping the language in this section consistent with the language in the Chu Guidance memo. Otherwise, this could be construed as a change to the Secretary's guidance, and there will need to be a clarification of the Secretary's memo to the field on this if the intent was to be a rolling 12-month period.

Response:
Reject The word "rolling" is consistent with Secretarial policy and has been appropriately included in this Order for the purpose of clarifying the application of Secretary Chu's guidance in specific circumstances.

Major comment from Jennifer Kelley for Headquarters SC
Paragraph 5b. The "within a rolling 12-month period" requirement represents an expansion of current Department policy signed by Secretary Chu in 2011. The only reference for a rolling 12-month period has been for the triggering of the requirement for the contractor to conduct and choose to seek Departmental review of an adverse impact analysis when reaching 50 involuntary separations. However, the thresholds established for the number of prospective separations that trigger Departmental notification and/or approval have been near term actions or looking forward through the Fiscal Year. We have not administered this as a rolling-12 month look back.

Response:
Reject The word "rolling" is consistent with Secretarial policy and has been appropriately included in this Order for the purpose of clarifying the application of Secretary Chu's guidance in specific circumstances.

Major comment from David Neil for Idaho Operations Office (EM)

Included comments:

Delegate Paul H Allen for Idaho Operations Office (EM)
For the record, the relevant section of the Secretary's Guidance on Workforce Restructuring (from which these requirements are derived) is not clear that conditions for preparing a specific restructuring plan apply to a "rolling

12-month period". In fact, the relevant section is silent on that, suggesting the intent is similar to the previous section that indicates that a plan is necessary when the number of separations is reached "within a 12-month period" (1st Paragraph, Page 2 of Secretary Chu's memo dated May 5, 2011). The only reference to a rolling 12-month period is specifically noted when it comes to the requirement for preparing an adverse impact analysis (second to last paragraph, page 3). I would recommend keeping the language in this section consistent with the language in the Chu Guidance memo. Otherwise, this could be construed as a change to the Secretary's guidance, and there will need to be a clarification of the Secretary's memo to the field on this if the intent was to be a rolling 12-month period.

Response:
Reject The word "rolling" is consistent with Secretarial policy and has been appropriately included in this Order for the purpose of clarifying the application of Secretary Chu's guidance in specific circumstances.

Major comment from David Neil for Idaho Operations Office (NE)

Included comments:

Delegate Paul H Allen for Idaho Operations Office (NE)
For the record, the relevant section of the Secretary's Guidance on Workforce Restructuring (from which these requirements are derived) is not clear that conditions for preparing a specific restructuring plan apply to a "rolling 12-month period". In fact, the relevant section is silent on that, suggesting the intent is similar to the previous section that indicates that a plan is necessary when the number of separations is reached "within a 12-month period" (1st Paragraph, Page 2 of Secretary Chu's memo dated May 5, 2011). The only reference to a rolling 12-month period is specifically noted when it comes to the requirement for preparing an adverse impact analysis (second to last paragraph, page 3). I would recommend keeping the language in this section consistent with the language in the Chu Guidance memo. Otherwise, this could be construed as a change to the Secretary's guidance, and there will need to be a clarification of the Secretary's memo to the field on this if the intent was to be a rolling 12-month period.

Response:
Reject The word "rolling" is consistent with Secretarial policy and has been appropriately included in this Order for the purpose of clarifying the application of Secretary Chu's guidance in specific circumstances.

Suggested comment from Scott Mallette for Thomas Jefferson Site Office

Included comments:

SME dbrittin@jlab.org

What policy requires contractor to prepare a specific workforce restructuring plan? Currently the Secretary's May 5, 2011 memo provides when a restructuring plan is needed. If this is the authority, then the requirements should be listed in a CRD.

c. In order to provide substantive and helpful comments and to work with the contractors on approaches to reduce risk, Under Secretaries/ designees, in consultation with appropriate staff offices, will review any Specific Plan within 10 business days after submission of the plan, unless the contractor is notified of issues necessitating an extension of time.

d. The Specific Plan shall lay out how contractor workforce restructuring action will be conducted at the site in a manner that meets the objectives of this Chapter. The Department has

developed a template for Specific Plans to ensure consistency and accurate application of Section 3161 and Departmental policy, as well as to expedite Departmental review. The templates for the contractor Self-Select Voluntary Separation Plan and the contractor Involuntary Separation Plan, as well as the General Release and Waiver Form can be found online at http://energy.gov/gc/services/technology-transfer-and-procurement/office-assistant-general-counsel-labor-and-pension. If the contractor believes it will be necessary to conduct a voluntary separation program followed by an involuntary separation, the contractor may combine the Self-Select Voluntary Separation Plan and the contractor Involuntary Separation Plan into one Specific Plan to be submitted to the Department.

Suggested comment from Jennifer Kelley for Headquarters SC
Paragraph 5d. The linked guidance refers to an adverse impact analysis in cases of involuntary separations of 50 or more employees. Please clarify DOE's expectations for submission of a diversity analysis in cases where the Specific Plan threshold are not met? The same comment applies to Section (c)(7) below.

Response:
Reject A Specific Plan is required every time there will be 50 or more involuntary separations, regardless of whether there are voluntary separations conducted at the same time. If there are less than 50 involuntary separations in a rolling 12-month period an adverse impact analysis is not required. Additional language from the Chu guidance is added for clarification.

e. DOE/NNSA notifications to Congress of upcoming workforce restructuring actions will occur within 48 hours (two business days) of approval of the Specific Plan, or contractors will be provided with an estimate for completing notification, to allow appropriate planning to occur. This notification to Congress must occur prior to any public announcement by DOE, NNSA, or the contractor.

Major comment from Marilyn Jacobs for Headquarters EM

Included comments:

SME Cindy.Oliver@rl.doe.gov
Suggest changing text to the following: DOE/NNSA notifications to Congress of upcoming workforce restructuring actions will occur ~~**within**~~ at a minimum, 48 hours (two business days) **prior to employees and/or the public being notified** ~~**of approval of the Specific Plan, or contractors will be provided with an estimate for completing notification, to allow appropriate planning to occur**~~. This notification to Congress must occur prior to any public announcement by DOE, NNSA, or the contractor.

Response:
Reject No change necessary. If additional time is needed by EM, the time should be taken prior to notification to the contractor that the Specific Plan has been approved.

Major comment from Jodi Dawson for Richland Operations Office

Included comments:

SME Cindy.Oliver@rl.doe.gov
Suggest changing text to the following: DOE/NNSA notifications to Congress of upcoming workforce restructuring actions will occur ~~**within**~~ at a minimum, 48 hours (two business days) **prior to employees and/or**

the public being notified ~~of approval of the Specific Plan, or contractors will be provided with an estimate for completing notification, to allow appropriate planning to occur~~. This notification to Congress must occur prior to any public announcement by DOE, NNSA, or the contractor.

Response:
Reject No change necessary. If additional time is needed by EM, the time should be taken prior to notification to the contractor that the Specific Plan has been approved.

f. For non-defense DOE facilities, the delivery of a General Plan to Congress is at the discretion of the Secretary.

g. Government contractors are prohibited by law from engaging in discrimination in the workplace and an adverse impact analysis (also known as a diversity analysis) may assist the contractor in ensuring compliance with Executive Order 11246, implemented through FAR clause 52.222.26. In analyzing contractor requests for reimbursement of costs associated with settlement of employment discrimination litigation, DOE/NNSA will take into account the results of any Office of General Counsel review of the contractor's adverse impact analysis. Information on adverse impact analyses, a template, and an example can be found online at http://energy.gov/gc/services/technology-transfer-and-procurement/office-assistant-general-counsel-labor-and-pension.

Suggested comment from Kathleen Ellis for Argonne National Laboratory

Included comments:

SME draker@anl.gov
The linked guidance refers to an adverse impact analysis in cases of involuntary separations of 50 or more employees. What are DOE's expectations for submission of a diversity analysis in cases where the Specific Plan threshold are not met? The same comment applies to Section (c)(7) below.

Suggested comment from John Kasprowicz for Argonne Site Office

Included comments:

SME draker@anl.gov
The linked guidance refers to an adverse impact analysis in cases of involuntary separations of 50 or more employees. What are DOE's expectations for submission of a diversity analysis in cases where the Specific Plan threshold are not met? The same comment applies to Section (c)(7) below.

Suggested comment from Marilyn Jacobs for Headquarters EM

Included comments:

Delegate Paul H Allen for Idaho Operations Office (EM)

Part (g) begs the question regarding what happens if the Office of General Counsel doesn't review the contractor's

adverse impact analysis. The Secretary's Guidance Memo specifically indicates that it will be submitted to GC at the contractor's discretion.

Response:
Reject The language of the Order accurately tracks Secretarial Policy, specifically the Chu guidance.

Suggested comment from PK Niyogi for Headquarters NE

Included comments:

Delegate Paul H Allen for Idaho Operations Office (NE)

Part (g) begs the question regarding what happens if the Office of General Counsel doesn't review the contractor's adverse impact analysis. The Secretary's Guidance Memo specifically indicates that it will be submitted to GC at the contractor's discretion.

Response:
Reject The language of the Order accurately tracks Secretarial Policy, specifically the Chu guidance.

Suggested comment from Jennifer Kelley for Headquarters SC

Paragraph 5g. The words "may assist" in the first sentence is not a definitive requirement. The requirement as to when a diversity analysis must be done should be clear in this Order in a CRD. The Secretary's May 5, 2011 memo states contractors must continue to perform a diversity analysis when the involuntary separation action affects 50 or more contractor employees within a rolling 12-month period. A copy of the analysis may to be provided to site counsel to assist in determinations regarding cost allowability.

At the end of the first sentence it might be helpful to reference the Tecom case in parenthesis as this is what triggered the need for a diversity analysis.

Response:
Accept with Modifications The language of the Order accurately tracks Secretarial Policy, specifically the Chu guidance. The explanation of what an AIA is used for is included for clarification purposes. Additional language is added to make it clear when a diversity analysis is required.

Suggested comment from David Neil for Idaho Operations Office (EM)

Included comments:

Delegate Paul H Allen for Idaho Operations Office (EM)

Part (g) begs the question regarding what happens if the Office of General Counsel doesn't review the contractor's adverse impact analysis. The Secretary's Guidance Memo specifically indicates that it will be submitted to GC at the contractor's discretion.

Response:
Reject The language of the Order accurately tracks Secretarial Policy, specifically the Chu guidance.

Suggested comment from David Neil for Idaho Operations Office (NE)

Included comments:

Delegate Paul H Allen for Idaho Operations Office (NE)

Part (g) begs the question regarding what happens if the Office of General Counsel doesn't review the contractor's adverse impact analysis. The Secretary's Guidance Memo specifically indicates that it will be submitted to GC at the contractor's discretion.

Response:
Reject The language of the Order accurately tracks Secretarial Policy, specifically the Chu guidance.

Suggested comment from Scott Mallette for Thomas Jefferson Site Office

Included comments:

SME dbrittin@jlab.org

The words "may assist" in the first sentence is not a definitive requirement. The requirement as to when a diversity analysis must be done should be clear in this Order in a CRD. The Secretary's May 5, 2011 memo states contractors must continue to perform a diversity analysis when the involuntary separation action affects 50 or more contractor employees within a rolling 12-month period. A copy of the analysis is to be provided to site counsel to assist in determinations regarding cost allowability.

At the end of the first sentence it might be helpful to reference the Tecom case in parenthesis as this is what triggered the need for a diversity analysis.

h. The Department has developed a waiver of claims to be signed by any contractor employee subject to either a voluntary or involuntary contractor workforce restructuring action. The waiver can be found online at http://energy.gov/gc/services/technology-transfer-and-procurement/office-assistant-general-counsel-labor-and-pension.

Major comment from Kathleen Ellis for Argonne National Laboratory

Included comments:

SME draker@anl.gov
The provided link does not appear to provide a model involuntary waiver.

Major comment from John Kasprowicz for Argonne Site Office

Included comments:

SME draker@anl.gov
The provided link does not appear to provide a model involuntary waiver.

Major comment from Marilyn Jacobs for Headquarters EM

Included comments:

SME Cindy.Oliver@rl.doe.gov

As written, h. appears to be requirement. Suggest changing lanague to the following which is consistent with 5-5-2011 Secretary memo on WFR. **Contractors are encouraged to consider use of employee releases and waivers. If a release and/or waiver is used, t**he Department has developed a waiver of claims ~~**to be signed by any**~~ **for** contractor employee**s to sign** subject to either a voluntary or involuntary contractor workforce restructuring action. **Any deviation from the DOE developed form must be approved by GC-63.** The waiver can be found online at http://energy.gov/gc/services/technology-transfer-and-procurement/office-assistant-general-counsel-labor-and-pension.

Response:
Accept with Modifications The language has been changed for clarity.

Major comment from Cathy Tullis for Headquarters NA

Included comments:

Ken West for NA-Acquisition and Project Management
Chapter III, 5. Requirements Applicable to Both DOE/NNSA Defense Nuclear Facilities and Non-Defense Facilities h. : Recommend adding (i) stating, "The Department shall ensure contractors are not hiring or rehiring individuals, who volunteered for termination during a Self-Select Voluntary Separation Plan for a one-year period after the separation. If an employee is rehired prior to the one year period, the employee is required to pay back the severance received.

Response:
Accept with Modifications The language has been changed for clarity.

Suggested comment from Cathy Tullis for Headquarters NA

Included comments:

SME burke27@llnl.gov

h. This paragraph appears to suggest that the Department's model waiver of claims must be used by contractors. While the Department's development of a model waiver is useful, it is unlikely that any single waiver could address the various states' laws and case interpretations, or particular factual situations that could arise. For example, California law does not permit the waiver of unknown claims unless specific statutory language is recited in the waiver.

Request clarification that the form of the waiver is optional. Suggest adding "model" to read "The Department has developed a model waiver of claims ..."

Note that page III-8, 6(10), contemplates that contractors can request to use other waivers.

Response:
Accept with Modifications The language has been changed for clarity.

Major comment from Jennifer Kelley for Headquarters SC
Paragraph 5h. This Requirement statement requires revision to reflect that the use of waivers by contractors is optional. Also, a statement should be included to indicate that contractors that alter the referenced waiver or choose to use an alternative must have it cleared by GC-63.

Response:
Accept with Modifications The language has been changed for clarity.

Suggested comment from Jennifer Kelley for Headquarters SC
Paragraph 5h. The provided link does not appear to provide a model involuntary waiver. Suggest a direct link.

Response:
Accept

Suggested comment from Robert Park for Lawrence Livermore National Laboratory

Included comments:

SME burke27@llnl.gov

h. This paragraph appears to suggest that the Department's model waiver of claims must be used by contractors. While the Department's development of a model waiver is useful, it is unlikely that any single waiver could address the various states' laws and case interpretations, or particular factual situations that could arise. For example, California law does not permit the waiver of unknown claims unless specific statutory language is recited in the waiver.

Request clarification that the form of the waiver is optional. Suggest adding "model" to read "The Department has developed a model waiver of claims ..."

Note that page III-8, 6(10), contemplates that contractors can request to use other waivers.

Response:
Accept with Modifications The language has been changed for clarity.

Suggested comment from Walter Cyganowski for Livermore Field Office

Included comments:

SME burke27@llnl.gov

h. This paragraph appears to suggest that the Department's model waiver of claims must be used by contractors. While the Department's development of a model waiver is useful, it is unlikely that any single waiver could address the various states' laws and case interpretations, or particular factual situations that could arise. For example, California law does not permit the waiver of unknown claims unless specific statutory language is recited in the waiver.

Request clarification that the form of the waiver is optional. Suggest adding "model" to read "The Department has developed a model waiver of claims ..."

Note that page III-8, 6(10), contemplates that contractors can request to use other waivers.

Response:
Accept with Modifications The language has been changed for clarity.

Major comment from Ken West for NA-Acquisition and Project Management
Chapter III, 5. Requirements Applicable to Both DOE/NNSA Defense Nuclear Facilities and Non-Defense Facilities h. : Recommend adding (i) stating, "The Department shall ensure contractors are not hiring or rehiring individuals, who volunteered for termination during a Self-Select Voluntary Separation Plan for a one-year period after the separation. If an employee is rehired prior to the one year period, the employee is required to pay back the severance received.

Response:
Accept with Modifications The language has been changed for clarity.

Suggested comment from Regina Loy for Oak Ridge National Laboratory

Included comments:

SME kingmanja@ornl.gov
Recommend clarifying the situations which mandate the use of waivers. The phrase "to be signed by any contractor employee subject to either a voluntary or involuntary contractor workforce restructuring action" seems to require the use of waivers for both groups. I did not think that was the intent of the May 2011 guidance, which seems to make the use of waivers optional, albeit encouraged, in its discussion of "Use of Waivers and Releases of Claims with Involuntary Separation Programs"

Major comment from Jodi Dawson for Richland Operations Office

Included comments:

SME Cindy.Oliver@rl.doe.gov

As written, h. appears to be requirement. Suggest changing lanague to the following which is consistent with 5-5-2011 Secretary memo on WFR. **Contractors are encouraged to consider use of employee releases and waivers. If a release and/or waiver is used, t**he Department has developed a waiver of claims ~~**to be signed by any**~~ **for** contractor employee**s to sign** subject to either a voluntary or involuntary contractor workforce restructuring action. **Any deviation from the DOE developed form must be approved by GC-63.** The waiver can be found online at http://energy.gov/gc/services/technology-transfer-and-procurement/office-assistant-general-counsel-labor-and-pension.

Response:
Accept with Modifications The language has been changed for clarity.

6. RESPONSIBILITIES.

6. RESPONSIBILITIES.

a. The Secretary. Submits General Plans to Congress.

Suggested comment from Cathy Tullis for Headquarters NA

Included comments:

Ken West for NA-Acquisition and Project Management
Chapter III, 6. Responsibilities a.: Change to "Approve and submit..."

Response:
Accept

Suggested comment from Ken West for NA-Acquisition and Project Management
Chapter III, 6. Responsibilities a.: Change to "Approve and submit..."

Response:
Accept

b. Under Secretaries/Designees.

(1) Accountable for ensuring contractor workforce restructuring actions are managed in accordance with Departmental policy.

(2) Collaborate as necessary with the Offices of General Counsel (either DOE or NNSA, as appropriate), Management, Congressional and Intergovernmental Affairs, and Public Affairs.

(3) Coordinate notifications to Congress with Heads of Departmental elements in the field and with the Assistant Secretary for Congressional and Intergovernmental Affairs or the NNSA Associate Administrator for External Affairs.

(4) Approve workforce restructuring actions conducted by contractors in a rolling 12-month period involving:

(a) 50 or more employees through involuntary separation; or

(b) 100 or more employees through a combination of voluntary and involuntary separation actions at a single site.

This approval authority may be delegated as determined by the Under Secretary. All delegations must be made in writing.

Suggested comment from Marilyn Jacobs for Headquarters EM

Included comments:

Delegate Paul H Allen for Idaho Operations Office (EM)

To be consistent, I recommend striking the "rolling 12-month period" as it is inconsistent with the Secretary's Guidance Memo.

Further, because different Under Secretaries have delegated the authority differently, perhaps (4) should begin, "Unless otherwise delegated, approve workforce restructuring..."

Response:
Reject The word “rolling” is consistent with Secretarial policy and is appropriately included in this Order for the purpose of clarifying the application of Secretary Chu’s guidance in specific circumstances.

Suggested comment from Cathy Tullis for Headquarters NA

Included comments:

SME Terri.Slack@npo.doe.gov
SInce this authority has in fact been delegated, shouldn't it be noted here?

Response:
Reject he title of this Section subsection states "Under Secretaries/Designees" If the Under Secretary has delegated, then these requirements flow to that designee. Additionally, future Under Secretaries may decide not to delegate, this leaves that option open.

Suggested comment from PK Niyogi for Headquarters NE

Included comments:

Delegate Paul H Allen for Idaho Operations Office (NE)

To be consistent, I recommend striking the "rolling 12-month period" as it is inconsistent with the Secretary's Guidance Memo.

Response:
Reject The word "rolling" is consistent with Secretarial policy and is appropriately included in this Order for the purpose of clarifying the application of Secretary Chu's guidance in specific circumstances.

Major comment from Jennifer Kelley for Headquarters SC
Paragraph 6b(4). Same comment as provided for 5b. The "within a rolling 12-month period" requirement represents an expansion of current Department policy signed by Secretary Chu in 2011. The only reference for a rolling 12-month period has been for the triggering of the requirement for the contractor to conduct and choose to seek Departmental review of an adverse impact analysis when reaching 50 involuntary separations. However, the thresholds established for the number of prospective separations that trigger Departmental notification and/or approval have been near term actions or looking forward through the Fiscal Year. We have not administered this as a rolling-12 month look back.

Response:
Reject The word "rolling" is consistent with Secretarial policy and is appropriately included in this Order for the purpose of clarifying the application of Secretary Chu's guidance in specific circumstances.

Suggested comment from David Neil for Idaho Operations Office (EM)

Included comments:

Delegate Paul H Allen for Idaho Operations Office (EM)

To be consistent, I recommend striking the "rolling 12-month period" as it is inconsistent with the Secretary's Guidance Memo.

Further, because different Under Secretaries have delegated the authority differently, perhaps (4) should begin, "Unless otherwise delegated, approve workforce restructuring..."

Response:
Reject The word "rolling" is consistent with Secretarial policy and is appropriately included in this Order for the purpose of clarifying the application of Secretary Chu's guidance in specific circumstances.

Suggested comment from David Neil for Idaho Operations Office (NE)

Included comments:

Delegate Paul H Allen for Idaho Operations Office (NE)

To be consistent, I recommend striking the "rolling 12-month period" as it is inconsistent with the Secretary's Guidance Memo.

Response:
Reject The word “rolling” is consistent with Secretarial policy and is appropriately included in this Order for the purpose of clarifying the application of Secretary Chu’s guidance in specific circumstances.

Suggested comment from Sharon O'Bryant for NNSA Production Office

Included comments:

SME Terri.Slack@npo.doe.gov
SInce this authority has in fact been delegated, shouldn't it be noted here?

Response:
Reject he title of this Section subsection states “Under Secretaries/Designees” If the Under Secretary has delegated, then these requirements flow to that designee. Additionally, future Under Secretaries may decide not to delegate, this leaves that option open.

(5) Review any workforce restructuring action within 10 business days after submission of a Specific Plan by the contractor, in consultation with applicable staff offices, as appropriate, unless the contractors are notified of issues necessitating an extension of time.

(6) Review and submit, as appropriate, General Plans to the Secretary for approval and further submission to Congress.

Major comment from Marilyn Jacobs for Headquarters EM

Included comments:

SME Cindy.Oliver@rl.doe.gov

Delete the words noted in strikeout/red font - the plan is submitted by the Contractor to the field and from the field to the Under Secretary/Designee. As written, it appears as if the Contractor submits directly to HQ. "Review any workforce restructuring action within 10 business days after submission of a Specific Plan ~~by the contractor~~, in consultation with applicable staff offices, as appropriate, unless the contractors are notified of issues necessitating an extension of time."

Response:
Accept

Suggested comment from Cathy Tullis for Headquarters NA

Included comments:

Ken West for NA-Acquisition and Project Management
Chapter III, 6. Responsibilities b. (6) : Add "disapproval"

Response:
Accept

Suggested comment from Ken West for NA-Acquisition and Project Management
Chapter III, 6. Responsibilities b. (6) : Add "disapproval"

Response:
Accept

Major comment from Jodi Dawson for Richland Operations Office

Included comments:

SME Cindy.Oliver@rl.doe.gov

Delete the words noted in strikeout/red font - the plan is submitted by the Contractor to the field and from the field to the Under Secretary/Designee. As written, it appears as if the Contractor submits directly to HQ. "Review any workforce restructuring action within 10 business days after submission of a Specific Plan ~~by the contractor~~, in consultation with applicable staff offices, as appropriate, unless the contractors are notified of issues necessitating an extension of time."

Response:
Accept

(7) Receive from the Heads of Departmental elements in the field any request by a contractor to provide involuntarily separating contractor employees anything more than 2-weeks pay in lieu of providing the actual 60-day notice as required by the WARN Act.

(8) Approve/disapprove requests by the Contractor to provide involuntarily separating contractor employees anything more than 2-weeks pay in lieu of providing the actual 60-day notice as required by the Worker Adjustment and Retraining Notification Act (WARN).

Major comment from Kathleen Ellis for Argonne National Laboratory

Included comments:

SME draker@anl.gov

For both numbers 7 & 8: We currently provide a one month pay in lieu benefit to exempt employees. We believe that this benefit is appropriate for exempt employees and that it should not be potentially reduced through this proposed modification. Additionally, the WARN Act notice requirement only applies to plant closings and mass layoffs. Accordingly, the applicability of such a notice should only be referenced in connection with a plant closing or mass layoff. The reference to a required WARN notice is not accurate as applied to a contractor workforce restructuring action that does not meet the WARN threshold.

Major comment from John Kasprowicz for Argonne Site Office

Included comments:

SME draker@anl.gov

For both numbers 7 & 8: We currently provide a one month pay in lieu benefit to exempt employees. We believe that this benefit is appropriate for exempt employees and that it should not be potentially reduced through this proposed modification. Additionally, the WARN Act notice requirement only applies to plant closings and mass layoffs. Accordingly, the applicability of such a notice should only be referenced in connection with a plant closing or mass layoff. The reference to a required WARN notice is not accurate as applied to a contractor workforce restructuring action that does not meet the WARN threshold.

Major comment from Marilyn Jacobs for Headquarters EM

Included comments:

SME Cindy.Oliver@rl.doe.gov

Remove text notated with red/strikeout font. WARN should not be linked with pay-in-lieu of. These are are two separate issues (WARN - providing at least a 60-day advance notification to affected employee being laid off) and pay in-lieu of is a decision to have employees leave the work-site two-weeks before their last day of employment during a workforce restructuring event.

(7) Receive from the Heads of Departmental elements in the field any request by a contractor to provide involuntarily separating contractor employees anything more than 2-weeks pay in lieu **of** ~~**providing the actual 60-day notice as required by the WARN Act**~~.

(8) Approve/disapprove requests by the Contractor to provide involuntarily separating contractor employees anything more than 2-weeks pay in lieu of ~~**providing the actual 60-day notice as required by the Worker Adjustment and Retraining Notification Act (WARN).**~~

Response:
Reject The language has been changed for clarity.

Major comment from Cathy Tullis for Headquarters NA

Included comments:

Ken West for NA-Acquisition and Project Management

Chapter III, 6. Responsibilities b. (7): Recommend combining (7) and (8) to read as follows:

(7) Approve/disapprove all requests by the Contractor to provide involuntarily separating contractor employees pay in lieu of notice in excess of two weeks.

Response:
Accept with Modifications The language has been changed for clarity.

Suggested comment from Cathy Tullis for Headquarters NA

Included comments:

Henry Van Dyke for NA-General Counsel

Recommend combining (7) and (8) to read as follows:

(7) Approve/disapprove all requests by the Contractor to provide involuntarily separating contractor employees pay in lieu of notice in excess of two weeks.

RATIONALE: Most contracts cap pay in lieu of notice at two weeks, so phrasing it like this covers all cases that might come up, from pay in lieu of WARN Act notice to paying for three weeks instead of two because of some perceived security threat that RIFed employees allegedly present if they remain at the site after they are provided notice of termination.

Response:
Accept with Modifications The language has been changed for clarity.

SME burke27@llnl.gov

(7) and (8) These paragraphs appear to suggest that WARN notices are always required. However, as noted on page III-6, c. (6), WARN notices are not required in every situation requiring preparation of a 3161 Plan. Note, too, that many states (including California) have "mini-WARN" acts with somewhat different requirements from the federal WARN Act.

Suggest revising this paragraph, perhaps by changing "...requests by the contractor to provide separating contractor employees anything more than 2-weeks' pay in lieu of providing the actual 60-day notice as required by the WARN Act" to "...requests by the contractor to provide separating contractor employees who are entitled to 60 days' notice under the WARN Act anything more than 2-weeks' pay in lieu of actual notice."

Response:
Accept with Modifications The language has been changed for clarity.

Suggested comment from Jennifer Kelley for Headquarters SC
Paragraph 6b(7)(8). Regarding (7) and (8), could you expand the statement or cite the reference to establish why there is a need for DOE review of a contractor's proposed intention to provide pay in lieu of notice of greater than 2 weeks as an alternative to the WARN Act's prescribed 60-day notice?

Response:
Accept with Modifications : The language has been changed for clarity. 350.1 provided approval for two weeks notice or pay in lieu of notice. Anything more than two weeks is an enhanced benefit for which there is no standing approval, and thus the contractor would need to come in to obtain the appropriate approvals.

Paragraph 6b(8). If (8) is revised to read "Approve/disapprove requests submitted by the Contractor through the Heads of Departmental Elements to provide..." (7) can be eliminated.

Response:
Accept with Modifications The language has been changed for clarity.

Paragraphs 6b(8) and 4(8) - Suggest rewrite as such:

Review and approve/disapprove requests from the Heads of DOE Elements for request by a contractor to provide involuntarily separating contractor employees more than two weeks' pay in lieu of providing the actual 60-day notice as required by the Worker Adjustment and Retraining Notification Act.

Is there a general distinction between DOE Elements and Heads of DOE Elements in the field as used in paragraph 6b(11)? These requirements should be placed under HCA responsibility to ensure compliance.

Which entity (GC-63 or MA-612) now has responsibility for consultation with stakeholders, labor unions, etc. at conferences, workshops or meetings to discuss WFR policy?

Response:
Accept with Modifications The language has been changed for clarity. Further, the responsibility for serving as the focal point in workforce restructuring policy has been transferred from LM to GC. GC attendance at conferences, workshops or meetings will be coordinated in consultation with the appropriate Departmental Elements.

Suggested comment from Robert Park for Lawrence Livermore National Laboratory

Included comments:

SME burke27@llnl.gov

(7) and (8) These paragraphs appear to suggest that WARN notices are always required. However, as noted on page III-6, c. (6), WARN notices are not required in every situation requiring preparation of a 3161 Plan. Note, too, that many states (including California) have "mini-WARN" acts with somewhat different requirements from the federal WARN Act.

Suggest revising this paragraph, perhaps by changing "...requests by the contractor to provide separating contractor employees anything more than 2-weeks' pay in lieu of providing the actual 60-day notice as required by the WARN Act" to "...requests by the contractor to provide separating contractor employees who are entitled to 60 days' notice under the WARN Act anything more than 2-weeks' pay in lieu of actual notice."

Response:
Accept with Modifications The language has been changed for clarity.

Suggested comment from Walter Cyganowski for Livermore Field Office

Included comments:

SME burke27@llnl.gov

(7) and (8) These paragraphs appear to suggest that WARN notices are always required. However, as noted on page III-6, c. (6), WARN notices are not required in every situation requiring preparation of a 3161 Plan. Note, too, that many states (including California) have "mini-WARN" acts with somewhat different requirements from the federal WARN Act.

Suggest revising this paragraph, perhaps by changing "...requests by the contractor to provide separating contractor employees anything more than 2-weeks' pay in lieu of providing the actual 60-day notice as required by the WARN Act" to "...requests by the contractor to provide separating contractor employees who are entitled to 60 days' notice under the WARN Act anything more than 2-weeks' pay in lieu of actual notice."

Response:
Accept with Modifications The language has been changed for clarity.

Major comment from Ken West for NA-Acquisition and Project Management

Chapter III, 6. Responsibilities b. (7): Recommend combining (7) and (8) to read as follows:

(7) Approve/disapprove all requests by the Contractor to provide involuntarily separating contractor employees pay in lieu of notice in excess of two weeks.

Response:
Accept with Modifications The language has been changed for clarity.

Suggested comment from Henry Van Dyke for NA-General Counsel

Recommend combining (7) and (8) to read as follows:

(7) Approve/disapprove all requests by the Contractor to provide involuntarily separating contractor employees pay in lieu of notice in excess of two weeks.

RATIONALE: Most contracts cap pay in lieu of notice at two weeks, so phrasing it like this covers all cases that might come up, from pay in lieu of WARN Act notice to paying for three weeks instead of two because of some perceived security threat that RIFed employees allegedly present if they remain at the site after they are provided notice of termination.

Response:
Accept with Modifications The language has been changed for clarity.

Major comment from Jodi Dawson for Richland Operations Office

Included comments:

SME Cindy.Oliver@rl.doe.gov

Remove text notated with red/strikeout font. WARN should not be linked with pay-in-lieu of. These are are two separate issues (WARN - providing at least a 60-day advance notification to affected employee being laid off) and pay in-lieu of is a decision to have employees leave the work-site two-weeks before their last day of employment during a workforce restructuring event.

(7) Receive from the Heads of Departmental elements in the field any request by a contractor to provide involuntarily separating contractor employees anything more than 2-weeks pay in lieu **of** ~~**providing the actual 60-day notice as required by the WARN Act**~~.

(8) Approve/disapprove requests by the Contractor to provide involuntarily separating contractor employees anything more than 2-weeks pay in lieu of ~~**providing the actual 60-day notice as required by the Worker Adjustment and Retraining Notification Act (WARN).**~~

Response:
Reject The language has been changed for clarity.

Suggested comment from Scott Mallette for Thomas Jefferson Site Office

Included comments:

SME dbrittin@jlab.org

These paragraphs are very similar and could be combined into a single paragraph.

(9) Notify the Heads of Departmental elements in the field and COs that they are not to approve contractor requests for enhanced benefits, i.e., benefits in excess of those provided for under the parties' contract, including benefits in excess of those provided for under any benefit plans approved by the Department.

(10) Notify the Heads of Departmental elements in the field and COs that they are not to approve requests for reimbursement of early retirement incentives funded through contractor pension plans.

Major comment from Marilyn Jacobs for Headquarters EM

Included comments:

SME Cindy.Oliver@rl.doe.gov
Consistent with the change to Section 3.c., add the following sentence to the end of the text in (9): Such requests may only be approved by the appropriate Under Secretary.

Response:
Reject Though this comment is rejected, the language has been modified for clarity.

Suggested comment from Marilyn Jacobs for Headquarters EM

Included comments:

Delegate Paul H Allen for Idaho Operations Office (EM)
This section doesn't seem necessary. The policy that prohibits these activities has already been stated, and codifying the notification as an Under Secretary action seems to warrant some kind of regular notification activity, when in fact, no notice is really required, only a statement of the policy as already conveyed in this document. Recommend striking (9) and (10).

Response:
Reject Though this comment is rejected, the language has been modified for clarity.

Suggested comment from David Neil for Idaho Operations Office (EM)

Included comments:

Delegate Paul H Allen for Idaho Operations Office (EM)
This section doesn't seem necessary. The policy that prohibits these activities has already been stated, and codifying the notification as an Under Secretary action seems to warrant some kind of regular notification activity, when in fact, no notice is really required, only a statement of the policy as already conveyed in this document. Recommend striking (9) and (10).

Response:
Reject Though this comment is rejected, the language has been modified for clarity.

Major comment from Jodi Dawson for Richland Operations Office

Included comments:

SME Cindy.Oliver@rl.doe.gov
Consistent with the change to Section 3.c., add the following sentence to the end of the text in (9): Such requests may only be approved by the appropriate Under Secretary.

Response:
Reject Though this comment is rejected, the language has been modified for clarity.

(11) In coordination with the Heads of Departmental elements in the field, develop mechanisms to ensure contractors are not hiring or rehiring individuals, during the one-year prohibition period, who volunteered for termination during a Self-Select Voluntary Separation Plan.

(12) In coordination with the Heads of Departmental elements in the field, develop performance measures to assess contractor success in developing strategies for contractor management to use recruitment, retention, and best practices to ensure continued availability of the critical workforce knowledge, skills, and abilities required for the Department's missions.

Major comment from Marilyn Jacobs for Headquarters EM

Included comments:

SME Cindy.Oliver@rl.doe.gov
Add the following sentence to the end of (11): "unless severance is paid back within one (1) year of re-employment."

Response:
Accept with Modifications The language has been changed for clarity.

Major comment from Cathy Tullis for Headquarters NA

Included comments:

Ken West for NA-Acquisition and Project Management
Chapter III, 6. Responsibilities b. (12): What type of performance measures? Are any measures currently used? Will DOE GC be lead in developing the measures? Recommend deletion.

Response:
Accept with Modifications The language has been changed for clarity.

Suggested comment from Cathy Tullis for Headquarters NA

Included comments:

SME Terri.Slack@npo.doe.gov
Snce the HCA plays a very large role in approving VSPs and involuntary separations invovlving 200-400 employees, may want to spell out HCA responsibilities.

Response:
Accept with Modifications Language has been added for clarity.

Henry Van Dyke for NA-General Counsel

6.b.12. Same comment: are we measuring how well they have "developed strategies" or how well they "recruit & retain in order to keep the critical skills? Recommend clarifying exactly what we are seeking to assess.

Response:
Accept with Modifications Language has been added for clarity.

Suggested comment from Jennifer Kelley for Headquarters SC
Paragraph 6b(11). Development of such a mechanism to monitor hire/rehire of self-select separations is viewed as a needed tool.

Response:
Reject Though this comment is rejected, the language has been modified for clarity.

Major comment from Ken West for NA-Acquisition and Project Management
Chapter III, 6. Responsibilities b. (12): What type of performance measures? Are any measures currently used? Will DOE GC be lead in developing the measures? Recommend deletion.

Response:
Accept with Modifications The language has been changed for clarity.

Suggested comment from Henry Van Dyke for NA-General Counsel

6.b.12. Same comment: are we measuring how well they have "developed strategies" or how well they "recruit & retain in order to keep the critical skills? Recommend clarifying exactly what we are seeking to assess.

Response:
Accept with Modifications Language has been added for clarity.

Suggested comment from Sharon O'Bryant for NNSA Production Office

Included comments:

SME Terri.Slack@npo.doe.gov

Snce the HCA plays a very large role in approving VSPs and involuntary separations invovlving 200-400 employees, may want to spell out HCA responsibilities.

Response:
Accept with Modifications Language has been added for clarity.

Major comment from Jodi Dawson for Richland Operations Office

Included comments:

SME Cindy.Oliver@rl.doe.gov
Add the following sentence to the end of (11): "unless severance is paid back within one (1) year of re-employment."

Response:
Accept with Modifications The language has been changed for clarity.

c. Office of the Assistant General Counsel for Labor and Pension Law for DOE and the NNSA Office of General Counsel (NNSA-GC) for NNSA.

(1) Work together to serve as the focal point for all information regarding contractor workforce restructuring actions at DOE/NNSA facilities.

(2) Advise Departmental elements regarding legal requirements and Departmental practices and policies concerning contractor workforce restructuring.

(3) Provide direction and guidance in the development and implementation of workforce restructuring plans (General and Specific).

(4) Review and make recommendations to the Under Secretaries/designees, and concur on General Plans.

Major comment from Cathy Tullis for Headquarters NA

Included comments:

Ken West for NA-Acquisition and Project Management
Chapter III, 6. Responsibilities c. (3: Recommend removing reference to Specific plans.

Response:
Reject Though this comment is rejected, the language has been modified for clarity.

Suggested comment from Cathy Tullis for Headquarters NA

Included comments:

Henry Van Dyke for NA-General Counsel

6.c.3.Recommend removing reference to "specific" plan that is to be developed by the contractor. Making this change makes 6.c.4 a bit redundant.

Response:
Reject Though this comment is rejected, the language has been modified for clarity.

Major comment from Ken West for NA-Acquisition and Project Management
Chapter III, 6. Responsibilities c. (3: Recommend removing reference to Specific plans.

Response:
Reject Though this comment is rejected, the language has been modified for clarity.

Suggested comment from Henry Van Dyke for NA-General Counsel

6.c.3.Recommend removing reference to "specific" plan that is to be developed by the contractor. Making this change makes 6.c.4 a bit redundant.

Response:
Reject Though this comment is rejected, the language has been modified for clarity.

(5) Review and make recommendations on Specific Plans submitted to Under Secretaries/designees that vary from the templates, are exceptions to DOE policy, or upon request of the Under Secretary/designee.

(6) Review and make recommendations on contractor WARN Act notices, if such notice is required.

(7) Review and approve/disapprove contractor adverse impact analyses as requested by contractors.

Major comment from Kathleen Ellis for Argonne National Laboratory

Included comments:

SME draker@anl.gov
Number 7: Given the time sensitivities involved at this stage in the process, we suggest a time limitation not to exceed 30 days for this review.

Major comment from John Kasprowicz for Argonne Site Office

Included comments:

SME draker@anl.gov
Number 7: Given the time sensitivities involved at this stage in the process, we suggest a time limitation not to exceed 30 days for this review.

Major comment from Cathy Tullis for Headquarters NA

Included comments:

Ken West for NA-Acquisition and Project Management
Chapter III, 6. Responsibilities c. (7): Recommend changing to "Review and provide feedback" instead of "review and approve/disapprove."

Response:
Accept with Modifications Language has been modified for clarity. The AIA is a tool used by contractors to evaluate proposed involuntary separations for effect on protected classifications. Approval by GC means that upon review there appears to be no impact upon protected classifications. It does not mean that there is no discrimination, but that based upon these statistical tests, there is nothing we can see indicating there is discrimination.

Ken West for NA-Acquisition and Project Management
Chapter III, 6. Responsibilities c. (5) Recommend stopping sentence after "designees."

Response:
Accept

Suggested comment from Cathy Tullis for Headquarters NA

Included comments:

Henry Van Dyke for NA-General Counsel

6.c.5: Stop sentence after "designees." Rationale: GC would see all plans submitted pursuant to May 2011 Secretarial guidance, do we need those modifiers?

6.c.7: Recommend changing to "Review and provide feedback" instead of "review and approve/disapprove." Rationale: Approving the adverse impact analyses might put DOE/NNSA COs in a disadvantageous position to challenge litigation costs associated with employees' disparate impact claims pursuant to the Acquisition Letter on Tecom or under another rationale available.

Response:
Accept with Modifications

Language has been modified for clarity. The AIA is a tool used by contractors to evaluate proposed separations for effect on protected classifications. Approval by GC means that upon review there appears to be no outright affect upon protected classifications at the time approved. It does not mean there is no discrimination in specific cases. It simply means that based upon these statistical tests found in the AIA there is no legal basis for objecting to the contractor proceeding with the separation program. It also does not mean the contractor is free of its responsibilities to make sure it is not discriminating. The review and approval of the AIA is only one factor taken into account in determining whether and to what extent the costs of defending the action should be reimbursed. Reasonableness of the actions is the key and the AIA review provides DOE/NNSA with a beginning level of confidence that the contractor is not discriminating.

Major comment from Jennifer Kelley for Headquarters SC

Paragraph 6c(6). This is an expansion of current Departmental policy signed by Secretary Chu in 2011. Current policy reads that GC-63, as appropriate, is available to support the Under Secretaries by reviewing a contractor's WARN Act notice...

Suggest this bullet read, "When requested by the cognizant Under Secretary or designee(s), review and make recommendations on contract WARN Act notices, if such notice is required."

Response:
Accept with Modifications Language has been modified for clarity.

Suggested comment from Jennifer Kelley for Headquarters SC
Paragraph 6c(7): Given the time sensitivities involved at this stage in the process, we suggest a time limitation not to exceed 30 days for this review.

Response:
Reject If upon review, GC finds a legal concern warranting a decision to not provide GC approval, then GC will work with the Program and the contractor in an attempt to resolve the outstanding legal issues.

Paragraph 6c(7). If GC is assigned a responsibility to review and approve/disapprove a contractor's adverse impact analyses, then they also need to have a responsibility assigned to provide the review results and approval/disapproval decision to the Contracting Officer for use, as necessary, in any subsequent cost reimbursement decisions. Otherwise, if GC does not share the results of their efforts, then it is impossible to have it taken into account later as part of any cost allowability determination by the Department as stated in the requirements section 5.g of the Order.

Response:
Reject If upon review, GC finds a legal concern warranting a decision to not provide GC approval, then GC will work with the Program and the contractor in an attempt to resolve the outstanding legal issues.

Major comment from Ken West for NA-Acquisition and Project Management
Chapter III, 6. Responsibilities c. (5) Recommend stopping sentence after "designees."

Response:
Accept

Chapter III, 6. Responsibilities c. (7): Recommend changing to "Review and provide feedback" instead of "review and approve/disapprove."

Response:
Accept with Modifications Language has been modified for clarity. The AIA is a tool used by contractors to evaluate proposed involuntary separations for effect on protected classifications. Approval by GC means that upon review there appears to be no impact upon protected classifications. It does not mean that there is no discrimination, but that based upon these statistical tests, there is nothing we can see indicating there is discrimination.

Suggested comment from Henry Van Dyke for NA-General Counsel

6.c.5: Stop sentence after "designees." Rationale: GC would see all plans submitted pursuant to May 2011 Secretarial guidance, do we need those modifiers?

6.c.7: Recommend changing to "Review and provide feedback" instead of "review and approve/disapprove." Rationale: Approving the adverse impact analyses might put DOE/NNSA COs in a disadvantageous position to challenge litigation costs associated with employees' disparate impact claims pursuant to the Acquisition Letter on Tecom or under another rationale available.

Response:
Accept with Modifications

Language has been modified for clarity. The AIA is a tool used by contractors to evaluate proposed separations for effect on protected classifications. Approval by GC means that upon review there appears to be no outright affect upon protected

classifications at the time approved. It does not mean there is no discrimination in specific cases. It simply means that based upon these statistical tests found in the AIA there is no legal basis for objecting to the contractor proceeding with the separation program. It also does not mean the contractor is free of its responsibilities to make sure it is not discriminating. The review and approval of the AIA is only one factor taken into account in determining whether and to what extent the costs of defending the action should be reimbursed. Reasonableness of the actions is the key and the AIA review provides DOE/NNSA with a beginning level of confidence that the contractor is not discriminating.

Major comment from Scott Mallette for Thomas Jefferson Site Office

Included comments:

SME dbrittin@jlab.org

This paragraph requires the contractor to provide their adverse impact analysis for review (again a CRD would be helpful).

The Secretary's May 5, 2011 memo states when a copy of the contractor's analysis is required; but, the memo does not require approval or disapproval of the contractor's analysis. Is this what we really want? Should DOE approve or disapprove the diversity analysis even if the contractor does not request it? Note that any involvement by the Department, i.e. General Counsel review/approval of the contractor's adverse input analyses will have a direct impact on Departmental determinations of cost allowability.

Suggested comment from Scott Mallette for Thomas Jefferson Site Office

Included comments:

SME arango@cebaf.gov
If GC is assigned a responsibility to review and approve/disapprove a contractor's adverse impact analyses, then they also need to have a responsibility assigned to provide the review results and approval/disapproval decision to the Contracting Officer for use, as necessary, in any subsequent cost reimbursement decisions. Otherwise, if GC does not share the results of their efforts, then it is impossible to have it taken into account later as part of any cost allowability determination by the Department as stated in the requirements section 5.g of the Order.

d. Director, Contractor Human Resources Policy Division for DOE, and Manager, NNSA Contractor Human Resources Division (NNSA-CHRD) for NNSA.

(1) Provide guidance to Departmental elements regarding Departmental policies and practices concerning contractor benefits and compensation.

(2) Review and makes recommendations to the Under Secretaries/designees on General Plans.

(3) Review and makes recommendations on Specific Plans submitted to Under Secretaries/designees that vary from the templates, are exceptions to DOE policy, or upon request of the Under Secretary/designee.

(4) Request and collect data on actual and planned contractor workforce restructuring actions through an annual data call.

Major comment from Marilyn Jacobs for Headquarters EM

Included comments:

SME Cindy.Oliver@rl.doe.gov
Change (4) to the following: **Review annual data collection reported in iBenefits by each Field Office on ~~Request and collect data on~~** actual and planned contractor workforce restructuring actions through an annual data call.

Response:
Accept

Major comment from Cathy Tullis for Headquarters NA

Included comments:

Ken West for NA-Acquisition and Project Management

Chapter III, 6. Responsibilities d. (3): Recommend stopping sentence after "designees."

Response:
Accept

Ken West for NA-Acquisition and Project Management

Chapter III, 6. Responsibilities d. (4):

Add (5): After a voluntary separation program (VSP) is conducted at a site, work with the Contractor Human Resources Policy Division/NNSA-CHRB and the Personnel Security Division, to put in place procedures to ensure timely notification is provided to the contactor that conducted the VSP in the event a departed VSP participant becomes employed at a different DOE/NNSA site in violation of the individual's separation agreement.

Response:
Reject The responsibility for this is with the Under Secretary/Designee and HCA & Heads of Departmental Elements in the Field. As such they have discretion as to how to carry out this responsibility.

Suggested comment from Cathy Tullis for Headquarters NA

Included comments:

Henry Van Dyke for NA-General Counsel

6.d.3. Stop sentence after "designees."

6.d.: Add a section (5): After a voluntary separation program (VSP) is conducted at a site, work with the Contractor Human Resources Policy Division/NNSA-CHRD and the Personnel Security Division, to put in place procedures to ensure timely notification is provided to the contactor that conducted the VSP in the event a departed VSP participant becomes employed at a different DOE/NNSA site in violation of the individual's separation agreement.

Response:
Accept with Modifications Language has been modified as to the first comment. As to the second comment, the

responsibility for this is with the Under Secretary/Designee and HCA & Heads of Departmental Elements in the Field. As such they have discretion as to how to carry out this responsibility

Major comment from Ken West for NA-Acquisition and Project Management

Chapter III, 6. Responsibilities d. (3): Recommend stopping sentence after "designees."

Response:
Accept

Chapter III, 6. Responsibilities d. (4):

Add (5): After a voluntary separation program (VSP) is conducted at a site, work with the Contractor Human Resources Policy Division/NNSA-CHRB and the Personnel Security Division, to put in place procedures to ensure timely notification is provided to the contactor that conducted the VSP in the event a departed VSP participant becomes employed at a different DOE/NNSA site in violation of the individual's separation agreement.

Response:
Reject The responsibility for this is with the Under Secretary/Designee and HCA & Heads of Departmental Elements in the Field. As such they have discretion as to how to carry out this responsibility.

Suggested comment from Henry Van Dyke for NA-General Counsel

6.d.3. Stop sentence after "designees."

6.d.: Add a section (5): After a voluntary separation program (VSP) is conducted at a site, work with the Contractor Human Resources Policy Division/NNSA-CHRD and the Personnel Security Division, to put in place procedures to ensure timely notification is provided to the contactor that conducted the VSP in the event a departed VSP participant becomes employed at a different DOE/NNSA site in violation of the individual's separation agreement.

Response:
Accept with Modifications Language has been modified as to the first comment. As to the second comment, the responsibility for this is with the Under Secretary/Designee and HCA & Heads of Departmental Elements in the Field. As such they have discretion as to how to carry out this responsibility

Major comment from Jodi Dawson for Richland Operations Office

Included comments:

SME Cindy.Oliver@rl.doe.gov
Change (4) to the following: **Review annual data collection reported in iBenefits by each Field Office on ~~Request and collect data on~~** actual and planned contractor workforce restructuring actions through an annual data call.

Response:
Accept

e. Heads of Departmental Elements in the Field.

(1) Oversee the management of workforce changes consistent with Section 3161 of the National Defense Authorization Act for Fiscal Year 1993 and Department policy, as set forth herein, and as may be amended from time to time.

(2) Prepare General Plans and updates in accordance with this chapter.

(3) In coordination with the CO, provide direction and guidance to the Contractor with respect to the development and implementation of Specific Plans, in accordance with this chapter.

(4) In coordination with the CO, review and make recommendations concerning contractor Specific Plans and obtain approvals from senior Departmental managers as set forth in this Chapter.

Major comment from Marilyn Jacobs for Headquarters EM

Included comments:

SME Cindy.Oliver@rl.doe.gov
Change (4) to read as follows: In coordination with the CO, review and make recommendations concerning contractor Specific Plans and obtain approvals from senior Departmental managers as set forth in this Chapter **and Departmental policies, as revised from time-to-time**.

Response:
Accept

Suggested comment from Cathy Tullis for Headquarters NA

Included comments:

SME burke27@llnl.gov

e. (2) This paragraph indicates that the Heads of Departmental Elements in the Field are responsible for preparing the General workforce restructuring plans.

It is unclear who the" Heads of Departmental Elements" are and would they be appropriately situated to prepare these documents.

It is unclear if this section applies to newly created plans only, or to both new and already approved plans.

Response:
Reject

Though this comment has been rejected, the language has been modified for clarity. 6.e.(2) applies to all General Plans and 6.e.(4) applies to all Contractor Specific Plans. The Heads of Departmental Elements are responsible for preparing General Workforce Restructuring Plans and do so through their contractor human resources staff.

This section applies to all Plans as set forth in this Chapter.

Suggested comment from Jennifer Kelley for Headquarters SC

Paragraph 6e(3). What is the direction and guidance that should be provided (this could be listed in a CRD or referred to as an Attachment).

Response:
Accept with Modifications Language has been modified for clarity. There has been a Departmental policy change in this regard. As Orders are revised, CRD's are removed and the requirements from the CRD's are addressed in contract H clauses. A draft of this Order with the CRD's removed was submitted and approved by the DRB on 2/5/14.

Suggested comment from Robert Park for Lawrence Livermore National Laboratory

Included comments:

SME burke27@llnl.gov

e. (2) This paragraph indicates that the Heads of Departmental Elements in the Field are responsible for preparing the General workforce restructuring plans.

It is unclear who the" Heads of Departmental Elements" are and would they be appropriately situated to prepare these documents.

It is unclear if this section applies to newly created plans only, or to both new and already approved plans.

Response:
Reject

Though this comment has been rejected, the language has been modified for clarity. 6.e.(2) applies to all General Plans and 6.e.(4) applies to all Contractor Specific Plans. The Heads of Departmental Elements are responsible for preparing General Workforce Restructuring Plans and do so through their contractor human resources staff.

This section applies to all Plans as set forth in this Chapter.

Suggested comment from Walter Cyganowski for Livermore Field Office

Included comments:

SME burke27@llnl.gov

e. (2) This paragraph indicates that the Heads of Departmental Elements in the Field are responsible for preparing the General workforce restructuring plans.

It is unclear who the" Heads of Departmental Elements" are and would they be appropriately situated to prepare these documents.

It is unclear if this section applies to newly created plans only, or to both new and already approved plans.

Response:
Reject

Though this comment has been rejected, the language has been modified for clarity. 6.e.(2) applies to all General Plans and 6.e.(4) applies to all Contractor Specific Plans. The Heads of Departmental Elements are responsible for preparing

General Workforce Restructuring Plans and do so through their contractor human resources staff.

This section applies to all Plans as set forth in this Chapter.

Major comment from Jodi Dawson for Richland Operations Office

Included comments:

SME Cindy.Oliver@rl.doe.gov
Change (4) to read as follows: In coordination with the CO, review and make recommendations concerning contractor Specific Plans and obtain approvals from senior Departmental managers as set forth in this Chapter **and Departmental policies, as revised from time-to-time**.

Response:
Accept

Suggested comment from Scott Mallette for Thomas Jefferson Site Office

Included comments:

SME dbrittin@jlab.org

paragraph 6.e. (3). What is the direction and guidance that should be provided (this could be listed in a CRD).

(5) In coordination with the CO, review contractor requests to pay separation incentives beyond those expressly authorized by contract and make a recommendation to Under Secretaries/designees for approval or disapproval of the contractor Specific Plan.

(6) Submit the contractor's final Specific Plan to the appropriate Under Secretary/designee.

(7) In coordination with the CO, obtain approval from the appropriate Under Secretary/designee for requests by the contractor to provide involuntarily separating contractor employees anything more than 2-weeks pay in lieu of providing the actual 60-day notice as required by the WARN Act.

(8) In coordination with the appropriate Under Secretary/designee, develop mechanisms to ensure contractors are not hiring or rehiring individuals, during the one-year prohibition period, who volunteered for termination during a Self-Select Voluntary Separation Plan.

(9) In coordination with the appropriate Under Secretary/designee, develop performance measures to assess contractor success in developing strategies for contractor management to use recruitment, retention, and best practices to ensure continued availability of the critical workforce knowledge, skills, and abilities required for the Department's missions

Major comment from Kathleen Ellis for Argonne National Laboratory

Included comments:

SME draker@anl.gov

Number 7: We currently provide a one month pay in lieu benefit to exempt employees. We believe that this benefit is appropriate for exempt employees and that it should not be potentially reduced through this proposed modification. Additionally, the WARN Act notice requirement only applies to plant closings and mass layoffs. Accordingly, the applicability of such a notice should only be referenced in connection with a plant closing or mass layoff. The reference to a required WARN notice is not accurate as applied to a contractor workforce restructuring action that does not meet the WARN threshold.

Major comment from John Kasprowicz for Argonne Site Office

Included comments:

SME draker@anl.gov

Number 7: We currently provide a one month pay in lieu benefit to exempt employees. We believe that this benefit is appropriate for exempt employees and that it should not be potentially reduced through this proposed modification. Additionally, the WARN Act notice requirement only applies to plant closings and mass layoffs. Accordingly, the applicability of such a notice should only be referenced in connection with a plant closing or mass layoff. The reference to a required WARN notice is not accurate as applied to a contractor workforce restructuring action that does not meet the WARN threshold.

Major comment from Marilyn Jacobs for Headquarters EM

Included comments:

SME Cindy.Oliver@rl.doe.gov

Make change to (7)to be consistent with previous changes in Under Secretary/Designee section above, numbers b. (7) and (8). In coordination with the CO, obtain approval from the appropriate Under Secretary/designee for requests by the contractor to provide involuntarily separating contractor employees anything more than 2-weeks pay in lieu of ~~**providing the actual 60-day notice as required by the WARN Act**~~.

Comment for (8) - Consistent with change made to b.(11), suggest adding the following text to (8) "unless severance is paid back within one (1) year of re-employment."

Comment for (9). It is not clear as to what is meant by "develop performance measures" and/or how DOE would evaluate and will this be a contractual requirement for a program to be in place so DOE can assess as 350.3 does not include a CRD?

Add new paragraph to read as follows: Ensure contractors provide a 60-day notification if WARN Act applies; and send copy of draft WARN notice to GC-63 for review if notice required.

Response:
Accept with Modifications Language has been modified for clarity.

Suggested comment from Cathy Tullis for Headquarters NA

Included comments:

SME burke27@llnl.gov

e. (7) This paragraph also appears to suggest that WARN notices are always required. As noted above, and elsewhere in the document, WARN notices are not required in every situation requiring preparation of a 3161 Plan. Note, too, that many states (including California) have "mini-WARN" acts with somewhat different requirements.

Suggest revising this paragraph, perhaps by changing "...requests by the contractor to provide separating contractor employees anything more than 2-weeks' pay in lieu of providing the actual 60-day notice as required by the WARN Act" to "...requests by the contractor to provide separating contractor employees who are entitled to 60 days' notice under the WARN Act anything more than 2-weeks' pay in lieu of actual notice."

Response:
Accept with Modifications Language has been modified for clarity.

Suggested comment from Jennifer Kelley for Headquarters SC
Paragraph 6e(7)(8). For both numbers 7 & 8: ANL currently provides a one month pay in lieu benefit to exempt employees. We believe that this benefit is appropriate for exempt employees and that it should not be potentially reduced through this proposed modification. Additionally, the WARN Act notice requirement only applies to plant closings and mass layoffs. Accordingly, the applicability of such a notice should only be referenced in connection with a plant closing or mass layoff. The reference to a required WARN notice is not accurate as applied to a contractor workforce restructuring action that does not meet the WARN threshold.

Response:
Reject

Though this comment has been rejected, the language has been modified to improve clarity.

ANL must request the approval of the Deputy Secretary for any pay in lieu of notice in excess of two weeks. It is incorrect to state that, "the WARN Act notice requirement only applies to plant closings and mass layoffs."

Paragraph 6e (5). This paragraph is ambiguous in that it appears to contradict paragraph 6b(9) of this Chapter and paragraph 3.c of this Order. Suggest clarifying distinction between "separation incentives" and "enhanced benefits".

Response:
Accept with Modifications Language has been modified for clarity.

Suggested comment from Robert Park for Lawrence Livermore National Laboratory

Included comments:

SME burke27@llnl.gov

e. (7) This paragraph also appears to suggest that WARN notices are always required. As noted above, and elsewhere in the document, WARN notices are not required in every situation requiring preparation of a 3161 Plan. Note, too, that many states (including California) have "mini-WARN" acts with somewhat different requirements.

Suggest revising this paragraph, perhaps by changing "...requests by the contractor to provide separating contractor employees anything more than 2-weeks' pay in lieu of providing the actual 60-day notice as required by the WARN Act" to "...requests by the contractor to provide separating contractor employees who are entitled to 60 days' notice under the WARN Act anything more than 2-weeks' pay in lieu of actual notice."

Response:
Accept with Modifications Language has been modified for clarity.

Suggested comment from Walter Cyganowski for Livermore Field Office

Included comments:

SME burke27@llnl.gov

e. (7) This paragraph also appears to suggest that WARN notices are always required. As noted above, and elsewhere in the document, WARN notices are not required in every situation requiring preparation of a 3161 Plan. Note, too, that many states (including California) have "mini-WARN" acts with somewhat different requirements.

Suggest revising this paragraph, perhaps by changing "...requests by the contractor to provide separating contractor employees anything more than 2-weeks' pay in lieu of providing the actual 60-day notice as required by the WARN Act" to "...requests by the contractor to provide separating contractor employees who are entitled to 60 days' notice under the WARN Act anything more than 2-weeks' pay in lieu of actual notice."

Response:
Accept with Modifications Language has been modified for clarity.

Major comment from Jodi Dawson for Richland Operations Office

Included comments:

SME Cindy.Oliver@rl.doe.gov

Make change to (7)to be consistent with previous changes in Under Secretary/Designee section above, numbers b. (7) and (8). In coordination with the CO, obtain approval from the appropriate Under Secretary/designee for requests by the contractor to provide involuntarily separating contractor employees anything more than 2-weeks pay in lieu of ~~**providing the actual 60-day notice as required by the WARN Act**~~.

Comment for (8) - Consistent with change made to b.(11), suggest adding the following text to (8) "unless severance is paid back within one (1) year of re-employment."

Comment for (9). It is not clear as to what is meant by "develop performance measures" and/or how DOE would evaluate and will this be a contractual requirement for a program to be in place so DOE can assess as 350.3 does not include a CRD?

Add new paragraph to read as follows: Ensure contractors provide a 60-day notification if WARN Act applies; and send copy of draft WARN notice to GC-63 for review if notice required.

Response:
Accept with Modifications Language has been modified for clarity.

Suggested comment from Scott Mallette for Thomas Jefferson Site Office

Included comments:

SME dbrittin@jlab.org

paragraph 6.e. (5). This paragraph is ambiguous in that it appears to contradict paragraph 6.b.(9) of this Chapter and paragraph 3.c of this Order.

paragraph 6.e. (6). Something else that could be addressed in a CRD...the requirement that a contractor submit a Specific Plan.

(10) In coordination with the CO, submit for approval/disapproval to the Office of the Assistant General Counsel for Pension and Labor Law or NNSA-GC any contractor request to use any waiver of claims other than the waiver of claims developed by the Department for use in either a voluntary or involuntary contractor workforce restructuring action.

Major comment from Cathy Tullis for Headquarters NA

Included comments:

Ken West for NA-Acquisition and Project Management
Chapter III, 6. Responsibilities e. (10): Recommend inserting, "Except where the contractor's work force is already covered by broader corporate personnel policies requiring the use of waivers and releases of claims by involuntarily separating employees in return for receipt of severance pay, waivers that comply with legal requirements can be used."

Response:
Reject If the contractor plans to use a waiver and release of claims form, it must be approved by DOE-GC or NNSA-GC, even where it has a broader corporate personnel policy.

Suggested comment from Cathy Tullis for Headquarters NA

Included comments:

SME Terri.Slack@npo.doe.gov
May want to spell out role of CO in workforce restructuring activities - approval of involuntary separations between 100 -199 employees; notice for between 10 -99 employees.

Response:
Reject The specific role of the CO would be spelled out in any delegation by the Under Secretary for workforce restructuring responsibilities. Not all such delegations are the same, thus it would not be appropriate to get into such detail in this Order.

SME Terri.Slack@npo.doe.gov
I see no mention of the Field Office Manager being delegated authority to concur in, with CO approval, invovluntary separations between 100-199 employees.

Response:
Reject The section pertaining to HCAs and Heads of Departmental Elements in the Field covers Field Office Managers.

Suggested comment from Jennifer Kelley for Headquarters SC
Paragraph 6e(10). Examples or guidance should be provided as to when a contractor should request use of waiver of claims.

Response:
Reject Such direction would not be appropriate in this Order. The Chu guidance provides specific information about the use of a release and waiver of claims form.

Major comment from Ken West for NA-Acquisition and Project Management

Chapter III, 6. Responsibilities e. (10): Recommend inserting, "Except where the contractor's work force is already covered by broader corporate personnel policies requiring the use of waivers and releases of claims by involuntarily separating employees in return for receipt of severance pay, waivers that comply with legal requirements can be used."

Response:
Reject If the contractor plans to use a waiver and release of claims form, it must be approved by DOE-GC or NNSA-GC, even where it has a broader corporate personnel policy.

Suggested comment from Sharon O'Bryant for NNSA Production Office

Included comments:

SME Terri.Slack@npo.doe.gov
I see no mention of the Field Office Manager being delegated authority to concur in, with CO approval, invovluntary separations between 100-199 employees.

Response:
Reject The section pertaining to HCAs and Heads of Departmental Elements in the Field covers Field Office Managers.

SME Terri.Slack@npo.doe.gov
May want to spell out role of CO in workforce restructuring activities - approval of involuntary separations between 100 -199 employees; notice for between 10 -99 employees.

Response:
Reject The specific role of the CO would be spelled out in any delegation by the Under Secretary for workforce restructuring responsibilities. Not all such delegations are the same, thus it would not be appropriate to get into such detail in this Order.

Suggested comment from Scott Mallette for Thomas Jefferson Site Office

Included comments:

SME dbrittin@jlab.org

Should be addressed in a CRD as to when contractor should request use of waiver of claims.

7. REFERENCES.

7. REFERENCES.

a. Worker Adjustment and Retraining Notification Act, Public Law 100-379 (August 4, 1988).

b. Section 3161 of the National Defense Authorization Act for Fiscal Year 1993 (Public Law 102-484), as amended (42 U.S.C. 2704 (2013).

c. Secretarial Policy Memo, "Authorize Changes to Workforce Restructuring Policy," dated May 5, 2011.

d. To access the below listed templates and forms as well as other information related to contractor workforce restructuring, please visit http://energy.gov/gc/services/technology-transfer-and-procurement/office-assistant-general-counsel-labor-and-pension.

(1) A listing of Defense Nuclear Facilities

(2) General Workforce Restructuring Plan Template

(3) Announcement of Draft Workforce Restructuring

(4) Section 3161 Rehiring Preference for Eligible Employees

(5) Self-Select Voluntary Separation Plan Template

(6) Involuntary Separation Plan Template

(7) Use of Waivers and Releases of Claims

(8) Workforce Restructuring Adverse Impact Analysis Examples

8. CONTACT

8. CONTACT. For guidance on legal requirements and Departmental practices and policies concerning contractor workforce restructuring, contact the appropriate site leads in the Office of the Assistant General Counsel for Labor and Pension Law at 202-586-7532 or the NNSA Office of General Counsel at (202) 586-2647. For a list of site lead contacts in the Office of the Assistant General Counsel for Labor and Pension Law please visit http://energy.gov/gc/leadership/contact-us/contacts-assistant-general-counsel-labor-and-pension-law. For general information on Departmental policies and practices regarding contractor benefits and compensation, contact the Contractor Human Resources Policy Division within the Office of Management at (202) 287-1330.